

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS AND PROCEDURES PANEL

SECRETARY OF STATE
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APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson
Mr. Marc Carrel, Vice Chairperson
Ms. Caren Daniels-Meade
Mr. David Jefferson
Mr. Lee Kercher
Mr. Tony Miller
Mr. John Mott-Smith

STAFF

Ms. Lisa Niegel
Mr. Michael Wagaman, Elections Analyst
Mr. Steve Stuart, Staff Counsel

ALSO PRESENT

Ms. Kim Alexander, The California Voter Foundation
Mr. Philip Chantri, Santa Clara County
Mr. Alfie Charles, Sequoia Voting Systems
Ms. Cathy Darling, Shasta County Clerk/Registrar of Voters

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INDEX

	PAGE
1. Sequoia Voting Systems	2
a. AVC Edge DRE	
b. VeriVote Printer	
c. WinEDS Software	
2. Election Systems & Software	119
a. Eagle Optical Scan	
b. iVotronic DRE	
c. Model IV-C Optical Scan	
3. Other Business	133
Adjournment	134
Reporter's Certificate	135

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PROCEEDINGS

1
2
3
4
5
6
7
8
9
10
11
12
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14
15
16
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18
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21
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CHAIRPERSON KYLE: We'll get started in 30 seconds.

Those of you who would like to have any comments, fill out the yellow card. There aren't that many people, so we'll recognize people.

We have a number of items today. We're going to get started. My name is Mark Kyle. For those of you who don't know, I'm Chair of the Voting Systems and Procedures Panel.

I'd like to welcome all of you here today. We have two main presentations for the Panel.

Just for record, I'll note that Deborah Jones, one of the Panel members is absent and will not be here today. We do have a quorum.

And I would like to proceed. So Mr. Wagaman, if you'd like to go to Agenda Item No. 1.

ELECTIONS ANALYST WAGAMAN: The first item is an application from Sequoia Voting Systems. The procedure is hardware, firmware and software consisting of WinEDS 3.0.134, the AVC Edge 4.3.320, Card Activator 4.3.320, and the VeriVote.

One note, some of the reports will reference, particularly the ones from the technical and consultant version, 4.3.307. That is the firmware version that the

1 state-tested. Subsequently the Feds required an
2 additional change, which I will reference, which caused
3 the jump from 4.3.307 to 4.3.3. -- 4.3.320. That's going
4 to screw me up.

5 CHAIRPERSON KYLE: Just go slow. That's fine.

6 ELECTIONS ANALYST WAGAMAN: So those are the --
7 so that's the reason for that discrepancy if you see that
8 anywhere.

9 The application consists of different components:

10 First being WinEDS 3.0.134. That's the election
11 management software. It's the same election management
12 software this panel previously recommended and the
13 Secretary previously certified about a month ago.

14 The second component of the application is the
15 AVC Edge 4.3.320, but previously certified version -- it's
16 an upgrade from the previously certified version.

17 The changes -- the most significant change is
18 support for the VeriVote system, which is their
19 voter-verified paper audit trail system. It includes also
20 additional functionalities including adding a provisional
21 voter ID to a smart -- to the voted smart cards.

22 Added functionalities allowing the voter to
23 specify audio -- allowing the poll worker to specify audio
24 voting when activating the smart card; displaying
25 undervotes and rate changes in the way it displays

1 undervotes in races in which there's a vote for more than
2 one -- basically a vote for more than one.

3 Previously, if there was a vote for only one --
4 you voted for one out of two, it would just show that one
5 out of two and not highlight it as an undervote. Now if
6 you voted for only one out of two, it would still
7 highlight that second one as a potential undervote.

8 An additional under functionality relates to the
9 printing of multiple results reports where the county
10 would go ahead and set in advance a feature to print
11 multiple reports rather than having to tell the -- we're
12 having to do that manually.

13 And also correction related to an anomaly on the
14 internal clock. This would only affect the older hardware
15 version numbers, so only Riverside County.

16 Third component is the card activator. Again,
17 the major change there is the previous reference change
18 allowing the poll worker to specify the audio loading when
19 activating the smart card.

20 And the fourth component is the VeriVote. This
21 is a new piece of hardware that has not been previously
22 certified in California. It is their voter-verified paper
23 audit trail system.

24 The way the VeriVote works is it mounted on the
25 left panel adjacent to the screen -- the DRE screen. It

1 is then connected by cord -- a series of cords to the back
2 of the unit. When the voter votes, they will vote as they
3 would have previously on the DRE, making their selections.
4 They'll view their review screen, accept their review
5 screen as previously, except -- and this is where a change
6 would occur -- where instead of the vote then just being
7 cast, the printer would then print a paper record which
8 would scroll up, be visible under Plexiglas. The voter
9 would then be able to review that, just determine if they
10 want to accept that ballot, either reject it -- it will
11 then reprint again -- or accept it and then it will reel
12 forward and be stored within that printer.

13 Federal testing. One change from the staff
14 report, subsequent to the issuing of the original NASED
15 number. There is a slight change in the number from NASED
16 in order to keep their numbering in sequence. So the new
17 number actually N-1-07-12-11-006 instead of 5. But it has
18 been issued an NASED number, although we have not yet
19 received the federal ITA reports.

20 However, one thing that we do believe will be
21 contained in the ITA reports is a reference to again this
22 being a sequential system of the reel-to-reel-based
23 system. And staff's belief is that the federal report
24 will basically say it's up to the states whether they want
25 to allow for that sequential storage of votes. So that's

1 one issue that will be for the Panel, whether to allow
2 that or not.

3 PANEL MEMBER DANIELS-MEADE: Michael, can I
4 interrupt you just for a second there. Because I'm
5 looking at everybody's paper, and we all have the same
6 question, it would appear.

7 This paragraph that you give us says -- you know,
8 there's a NASED number -- and I realize you just change
9 the number -- "has been issued for this system, put we
10 don't have final reports." And then the next part of that
11 sentence says, "and an NASED number has not been issued."
12 So I --

13 ELECTIONS ANALYST WAGAMAN: That would be a
14 result of the fact that this report was completed while I
15 was traveling in Orange County and I received a NASED
16 number while I was in Orange County --

17 PANEL MEMBER DANIELS-MEADE: So we should remove
18 that second part of the sentence.

19 Okay. Thank you.

20 ELECTIONS ANALYST WAGAMAN: We should remove that
21 second part. The NASED number has been issued. It has
22 not been posted to their website yet, but it has been
23 issued.

24 PANEL MEMBER DANIELS-MEADE: Thank you.

25 But the federal reports have not yet been

1 received.

2 I apologize for that.

3 PANEL MEMBER DANIELS-MEADE: That's okay.

4 ELECTIONS ANALYST WAGAMAN: So, again, the
5 sequential vote issue.

6 State testing, as I mentioned earlier, was
7 actually completed on version 4.3.307, not the 4.3.320,
8 which was the federal qualified version. The change there
9 is the Feds required the removal of the -- on the paper
10 record, for removal of a reference to which a machine
11 actually produced that paper record. This is a part of
12 addressing that sequential vote issue.

13 That was the only change between those two
14 version numbers. It has -- that change was reviewed on
15 the federal level. And staff has determined that we don't
16 think we need to look at that, and that won't require a
17 new round of state testing. But that is a discrepancy
18 between the version numbers.

19 However, during state testing there were three
20 points where we identified the VeriVote component of the
21 application as potentially conflicting with the state
22 standards.

23 The first is relating to the section of state
24 standards relating to accessibility for disabled voter.
25 Frequently the audio voters use the audio function. The

1 state standards basically require a hardware solution to
2 that issue that the data stream going to the audio has to
3 either come from the paper itself or has to be split off
4 with the data stream that's going to the printer. The
5 vendors use as a software solution -- it's basically the
6 same software is used -- that's to generate the audio
7 stream prior to the printing of the paper record is the
8 same audio stream that's use during the verification
9 process. So that is a potential conflict there.

10 Second conflict relates to the accessibility for
11 people using alternative languages. The state standards
12 require that the paper record be printed in both English
13 and the alternative language. That is a standard that
14 came from the counties out of concern about how they would
15 run a recount in a situation if the record was only
16 printed in the alternative language.

17 The third item is one that relates to the review
18 screen. As I described previously, the voter would view
19 the review screen, accept that. Then it would print the
20 paper record. But the review screen on the DRE and the
21 paper record would not be visible at the same time as
22 currently required by our state standards.

23 The vendor has, I will note, raised objections to
24 the staff's application of these standards in all three of
25 these cases. If you look in the public comment section,

1 they did submit a matrix that shows their comments on each
2 component of the state standards and why they believe
3 they're compliant or why they believe that standard should
4 not be applied.

5 Compliance with state and federal laws. Again,
6 the issues raised in that section are the same ones that
7 I've raised before. Again, the sequential storage of vote
8 on the federal level where we have to make a
9 determination. The three issues relating to the VeriVote,
10 none of those issues apply to the system if it's
11 configured without the VeriVote. The 4.3.320 can be used
12 either with or without the VeriVotes. There are two
13 different configurations really before you today.

14 Additional considerations. Again, as I said,
15 there are two different configurations, one with the
16 voter-verified paper audit trail and one without. The one
17 without obviously would still be bound by the requirements
18 from the Secretary's directives and now the legislation
19 from across the street requiring that that be put in place
20 by 2006.

21 In addition, they would obviously -- as a DRE
22 would be subject to the various conditions from the
23 decertification orders in April.

24 Public comment. At the time that this report was
25 released the staff had not received any public comment.

1 Subsequently, as I noted earlier, we did receive public
2 comment from the vendor.

3 We also received public comment from several
4 counties that use the Sequoia System. Those were
5 generally advocating adopting the system, including the
6 VeriVote. One noted -- or one of the comments, one of the
7 counties said to accept it; and if not to accept it, then
8 to table it to a future date rather than reject outright.

9 The staff recommendation. Staff recommendation
10 is to certify all of the components with the exception of
11 the VeriVote, so only the one configuration. The VeriVote
12 was not recommended for certification for the reasons
13 previously noted.

14 On the certification itself for the remaining
15 three components, several of these conditions are going to
16 be carried over from the previous certification on the
17 previous version of the firmware that was certified.

18 Condition one relates to the fact we still have
19 not received those federal ITA reports. And we're
20 requiring those to be submitted by the middle of next
21 week.

22 The second item is one again carried over from
23 the previous certification, involving the installation of
24 additional software utilities.

25 Items 3 and 4 both relate to previously

1 identified limitations with the previously certified
2 WinEDS software.

3 Item number 5 relates to -- it's just standard
4 language relating to no further changes being made to the
5 system without approval.

6 Item 6 and 7 and 8 all relate to the
7 decertification orders from the Secretary back in April.
8 The only change is, under Item 8, moving forward the date
9 to January rather than July reflecting new legislation.

10 Item No. 9 is standard language we now include
11 about modifications to the procedures to enhance the
12 security, accuracy or reliability of a system.

13 And Item No. 10 requires the submission of an
14 Election Observer Panel plan, which again the standard
15 language we include in any certification.

16 That concludes the staff report. The vendor is
17 present and, I'm sure, has comments as well.

18 CHAIRPERSON KYLE: Thank you, Michael.

19 I would like to allow the Panel to ask the staff
20 questions. Then I would like to hear from the vendor.

21 And I'd like to hear from any counties on this point.

22 Then I'd like to hear from public comments. And then I'd
23 like to come back to discussion with the panel.

24 So first questions from the panel to Mr. Wagaman
25 after he delivers this card.

1 Mr. Miller, any questions on your end at this
2 point?

3 PANEL MEMBER MILLER: No. Ms. Daniels-Meade
4 asked my question, and it's been answered.

5 PANEL MEMBER DANIELS-MEADE: Well, I'm so greedy.

6 CHAIRPERSON KYLE: Ms. Daniels-Meade.

7 PANEL MEMBER DANIELS-MEADE: No, I don't believe
8 I had any other questions.

9 CHAIRPERSON KYLE: At this point, none.

10 Mr. Carrel.

11 PANEL MEMBER CARREL: Do you want to wait, or
12 I'll go. I've got a bunch.

13 I know there's correction on the clock setting
14 that you talk about. And that was primarily for one
15 county using an old system, correct?

16 ELECTIONS ANALYST WAGAMAN: It is the older
17 hardware version number. The issue is that on occasion
18 the clock when it's first booted up will display the wrong
19 time. It will go back to a default time, in essence,
20 instead of just selecting the correct time.

21 PANEL MEMBER CARREL: Is that correction planning
22 on being installed for this election?

23 ELECTIONS ANALYST WAGAMAN: No, the county had
24 already dispelled their firmware version numbers, so they
25 would not upgrade for this time.

1 PANEL MEMBER CARREL: Okay. Let's go to the
2 Veri-Vote NASED number.

3 You said the NASED number was issued only
4 yesterday?

5 ELECTIONS ANALYST WAGAMAN: The 20th, which would
6 be two days ago.

7 PANEL MEMBER CARREL: And so this's no ITA
8 report, just a NASED number, correct?

9 ELECTIONS ANALYST WAGAMAN: Correct.

10 There's no NASED -- there's no report that has
11 been delivered to this office. It has been requested from
12 both the Feds and from the vendor and it hasn't been
13 delivered.

14 PANEL MEMBER CARREL: So we don't have
15 documentation, but we do know that a NASED number has been
16 approved?

17 ELECTIONS ANALYST WAGAMAN: Correct.

18 PANEL MEMBER CARREL: I note that there was
19 discussions related to -- among NASED related to the
20 federal qualification based on an IT A report that we
21 haven't seen. And I had to leave for a second. So I
22 assume you mentioned that it was related to randomness.

23 ELECTIONS ANALYST WAGAMAN: Correct, and then
24 related to a sequential storage of votes. Basically,
25 again, this is a reel-to-reel-based system. It stores the

1 votes sequentially. The Federal Government -- or the
2 federal process does not have its own voter-verified paper
3 audit trail standards in place.

4 So, therefore, they only have the DRE standards,
5 which they currently have. Those DRE standards are fairly
6 explicit in not allowing the storage of votes. But
7 those -- again, those standards are designed with an
8 electronic vote in mind. And that was the discussion on
9 the federal level, was whether or not to apply that
10 standard to the paper record.

11 PANEL MEMBER CARREL: Okay. And they -- we don't
12 know exactly what they did because we don't have anything
13 on the record?

14 ELECTIONS ANALYST WAGAMAN: We know that --

15 PANEL MEMBER CARREL: -- except -- we don't know
16 why they -- if they were just -- if they're explaining
17 their concerns?

18 ELECTIONS ANALYST WAGAMAN: We know that they
19 issued a NASED number. And indications on the staff
20 level, they indicated that in some way they were going to
21 note the sequential vote issue and basically make it a
22 state level decision. The exact language, I believe it is
23 either going to be noted when they post the NASED number
24 to their website or will be noted in the final report --
25 finalized report, or a combination thereof. But we don't

1 have that language at this point.

2 PANEL MEMBER CARREL: So they funded.

3 Let me move on to our standards. Now, I worked
4 with Mr. Mott-Smith with a working group -- several
5 working groups and, with you, Mr. Wagaman, and you were
6 the one who wrote most of the standards. And I know that
7 there were several issues in the standards that this
8 system doesn't meet.

9 Now, let me preface it by saying that I was in
10 Las Vegas and Clark County for the Nevada primary and also
11 for the early votings. So I saw how this system was used.
12 I was impressed with how the system was used. I was
13 impressed with the ease of which the voter took to the
14 system.

15 But I do know that the Nevada standards are not
16 nearly as rigorous as our standards. And one of them is
17 accessibility. When we adopted our standards based upon
18 the Secretary's directive, we did not just want to be a
19 VVPAT. We wanted an AVVPAT, accessible voter-verifiable
20 paper audit trail, which required that this data stream
21 going to the printer was the data that was being heard on
22 the audio portion by a blind voter and not just repeating
23 the same information that they input, which was going to
24 be read to them as confirming and wouldn't have to verify
25 their vote.

1 So I am a little disappointed that this system
2 doesn't -- isn't designed with that feature in mind.

3 Also I understand the language accessibility,
4 you're saying that it only provides for English and
5 Spanish, correct?

6 ELECTIONS ANALYST WAGAMAN: Correct. Currently
7 the vendor's application is only -- on the VeriVote
8 component is only for English and Spanish.

9 PANEL MEMBER CARREL: So when a voter votes in
10 Spanish, they're not seeing both language, they're just
11 seeing Spanish?

12 ELECTIONS ANALYST WAGAMAN: Correct.

13 PANEL MEMBER CARREL: Okay. Now, I recall when
14 we were working on the standards and we took input from
15 counties, we took input from a vendor, we took input from
16 poll workers, we took input from a technical group, there
17 was -- they each had different concerns. But I remember
18 that the county was the one who did not vote -- the
19 representatives from the county, I think there were six or
20 seven or of them, did not want it just in one language,
21 they wanted it both English and Spanish.

22 Do you recall what the rationale was?

23 ELECTIONS ANALYST WAGAMAN: The original draft of
24 the standards that was first released back whenever it was
25 did not have that in the language -- the current language.

1 It just said that the paper record had to be printed in
2 the same -- had to include the same language that the
3 voter voted in. So if the voter voted in Spanish, it had
4 to be printed at least in Spanish. Left that question of
5 whether the English would also appear open.

6 The county working group -- and one group left
7 out of the group that we set public comment from was the
8 public at large as well. But the public -- the county
9 working group raised a concern about their ability to run
10 recounts since under the standards the voter-verified
11 paper audit trail will always be using at least some of
12 the recounts, at least the one from -- recount, their
13 ability to run that efficiently and accurately if it was
14 printed, it did not also have that English language. So,
15 therefore, based out of that input, along with the other
16 input you described, that standard was changed in a final
17 draft.

18 PANEL MEMBER CARREL: I'm just interested in
19 maybe -- if you don't know, maybe someone on the Panel
20 does -- for counties that use non-English ballots pursuant
21 to the Voting Rights Act, are the ballots bilingual or are
22 they a single language?

23 PANEL MEMBER MOTT-SMITH: My understanding is
24 they're bilingual.

25 CHAIRPERSON KYLE: Say that into the mike.

1 PANEL MEMBER MOTT-SMITH: My understanding is
2 they're bilingual.

3 PANEL MEMBER CARREL: So a paper record that
4 we're requiring be bilingual is consistent with the
5 standard --

6 PANEL MEMBER MOTT-SMITH: Yeah, well, I couldn't
7 assert that that's true in all circumstances, but that's
8 to the best of my knowledge.

9 PANEL MEMBER CARREL: Do you have any
10 understanding?

11 ELECTIONS ANALYST WAGAMAN: Every place I've seen
12 it it's been bilingual. But I couldn't, again, say that
13 it's -- everywhere it's been bilingual.

14 CHAIRPERSON KYLE: Okay. So there are paper
15 records, in that if they print it in multiple languages,
16 it saves them.

17 PANEL MEMBER CARREL: Okay. The last thing you
18 noted that was consistent with our standards was the
19 review screen. And I know that this was something that
20 we -- I don't recall who required it. I think it was the
21 technical group that we put together to seek items from --
22 to require the paper trail to be -- the printout the paper
23 record. For the voter to verify it, we thought it made
24 sense for the paper record to display at the same time
25 that the review screen on the DRE was displayed so they

1 could compare them both; because, as we all know, we've
2 all voted for judge in local offices and we don't remember
3 what we voted for second after we vote because we move on.
4 That they could actually compare how their votes were --
5 was that --

6 ELECTIONS ANALYST WAGAMAN: That language was
7 actually I believe in the original drafts. But then as
8 part of the public comment period there was public comment
9 on both sides of that issue. And so it was brought
10 forward to the various working groups that were reviewing
11 that to gauge their opinion. And it was one of the places
12 where the stronger opinion on that side was from a
13 tactical working group.

14 CHAIRPERSON KYLE: Okay. I don't have any else
15 right now. Thanks.

16 CHAIRPERSON KYLE: Mr. Jefferson.

17 PANEL MEMBER JEFFERSON: Did I hear you say that
18 it was -- because I don't see it in writing here. But I
19 thought I heard you say the staff does not recommend
20 use -- the certification of VeriVote System?

21 ELECTIONS ANALYST WAGAMAN: Correct. The staff
22 recommendations for certification of the remaining three
23 components, the software, the firmware on DRE, and the
24 firmware on the card activator, but not for the VeriVote.

25 PANEL MEMBER JEFFERSON: Okay. I'll hold off

1 till later.

2 CHAIRPERSON KYLE: Mr. Kercher?

3 PANEL MEMBER KERCHER: No, I'm fine.

4 CHAIRPERSON KYLE: Mr. Mott-Smith?

5 PANEL MEMBER MOTT-SMITH: One comment I think I
6 would add in terms of the language in the bilingual
7 ballot, that the purpose of needing to be able to know
8 what you're looking at when you're doing a recount is more
9 applicable in a character-based language than in a Spanish
10 language translation. Though in either case the names of
11 the candidates are going to be the same. It's the offices
12 that would be potentially different. But it's not a-- at
13 least in my view it's not a barrier that is
14 insurmountable.

15 ELECTIONS ANALYST WAGAMAN: The only note of
16 exception there is some counties will add a candidate
17 requests, again, not for Spanish, but for the other
18 languages, will sometimes transliterate those names into
19 the character-based languages; in which case then they may
20 be printed in that language at least on the paper ballot
21 records. So if we were dealing with the Asian languages,
22 there may be that additional complication. But with the
23 Spanish you don't have that issue.

24 CHAIRPERSON KYLE: Okay. And I note, Caren, this
25 addresses some of the issues that you had on this point?

1 PANEL MEMBER DANIELS-MEADE: Um-hmm.

2 CHAIRPERSON KYLE: Okay. Go ahead.

3 PANEL MEMBER CARREL: I know it's not part of the
4 application because this comes from the vendor. But was
5 there a request from a county to use this system for this
6 election?

7 ELECTIONS ANALYST WAGAMAN: There was a
8 request -- there were two requests from two counties.
9 First was from Riverside just for the firmware component,
10 not for the VeriVote. They subsequently withdrew that
11 request because we weren't able go through the steady
12 testing process quick enough for their needs. So they're
13 using a previously certified version of the firmware.

14 The other request came from San Bernardino
15 County. They I believe -- my belief is their intent is to
16 try to use the VeriVote in a very limited situation,
17 basically at their county office on election day just for
18 that voting in a limited controlled environment on a
19 couple of machines.

20 PANEL MEMBER CARREL: Okay.

21 ELECTIONS ANALYST WAGAMAN: But that's the only
22 use for November that you'll see with this application, if
23 approved.

24 PANEL MEMBER JEFFERSON: But that request is not
25 before us at the moment, is that right?

1 CHAIRPERSON KYLE: Right.

2 ELECTIONS ANALYST WAGAMAN: That's just on the
3 staff level. If this was approved, that's the only intent
4 that has been expressed for use for November from any
5 county. The application is for full approval.

6 PANEL MEMBER JEFFERSON: Right. So that's what's
7 before us right now, the full approval application for --

8 ELECTIONS ANALYST WAGAMAN: Correct.

9 PANEL MEMBER JEFFERSON: Right. So what you're
10 saying is, if I understand correctly, there is no county
11 that needs -- that is even requesting this certification
12 of full approval for this election?

13 ELECTIONS ANALYST WAGAMAN: Well, San Bernardino
14 is requesting the approval in order to be able to use it
15 in a limited situation.

16 PANEL MEMBER JEFFERSON: All right. So I guess
17 that's what we're going to have to discuss then?

18 PANEL MEMBER CARREL: Plus we'll receive comments
19 from other counties requesting our approval as well.

20 PANEL MEMBER JEFFERSON: The only question on my
21 mind is, you know, I'm deeply concerned that here we at
22 the last second before a major general election
23 considering this. And I would feel a lot more comfortable
24 if we were considering an experiment that didn't involve
25 real votes.

1 And so, Mr. Chairman, how are we going to proceed
2 in distinguishing these two issues?

3 CHAIRPERSON KYLE: What I'd like to do is kind of
4 walk through some of a little bit more information
5 gathering. I'd like to hear from the vendor and I'd like
6 to hear from some of the counties. Then I think we can
7 put forward some of the communications we've received from
8 the county and see what kind of motion comes forward for
9 either adoption or rejection of the recommendation, some
10 proposal for a modification thereof, and then we can have
11 discussion on those. So that's how I'd like to proceed.

12 Are there any further questions of Mr. Wagaman
13 before I request the vendor representative to come
14 forward?

15 CHAIRPERSON KYLE: Alfie Charles, you're here
16 representing the vendor?

17 I'd assume you have a couple of comments.

18 MR. CHARLES: I do. Thank you.

19 First I'd like to begin by commending the state
20 for taking the initiative to put standards together when
21 others had not yet done so and when we really didn't know
22 exactly what these systems would look like in practice and
23 how they would function. I think the state did a very
24 good job in that environment putting these standards
25 together.

1 I think that we've met all of the standards, the
2 spirit of all of the standards with a couple of small
3 exceptions that I believe probably warrant in relation to
4 the standards or interpretation of the standards from
5 legal counsel and from a review of how those standards are
6 deployed in the field and what the human factors
7 components are of those standards, as well as whether a
8 slight change in the standards would do anything to reduce
9 the cost and increase the likelihood that these systems
10 will be able to be deployed quickly so the counties will
11 be able to use them in elections in 2005 as early as
12 possible so they can learn the technology, they can work
13 with it, they can get all of the issues that they need to
14 get resolved understood and under control prior to rolling
15 it out in a presidential -- or in a gubernatorial primary
16 election in 2006 when the mandate hits full speed. I
17 think that is critical to making sure that this project
18 and this concept works well.

19 On the specific points in the staff
20 recommendation, I think the first one I'd like to discuss
21 is the accessibility portion.

22 The accessibility of the machine provides the
23 same user interface. We tried to keep this as easy as
24 possible for voters with disabilities and visual impaired
25 voters. It is the same voting process used with the paper

1 trail that was used previously for the electronic systems,
2 accessible systems prior to the addition of the paper
3 trail. We heard concern that voters would be
4 disenfranchised, that they would have to invite someone
5 else in to look at that paper record before casting their
6 vote. They don't have to do that on this system.

7 In certification we've been able confirm and
8 demonstrate that the audio selections made by the voter
9 are the exact same as the printout. That printout is
10 reviewed sighted voters, by voters throughout the day, and
11 it has been demonstrated in certification to be consistent
12 with the audio representation to the voter.

13 It also is consistent with the federal guidance
14 that we received last summer, which was that the visual
15 impaired voter and the disabled voters need to have the
16 same but not identical access to the protections of the
17 voting system. That is, the paper record is generated for
18 the audio voter. Their ballot is secured. It's
19 protected. We've assured through certification that it's
20 correct. And they receive that protection that all other
21 voters receive with this current design. It contains the
22 same information. It has the same content that the audio
23 ballot has and we demonstrated that through certification.
24 We've also demonstrated that it works well in practice
25 throughout the State of Nevada.

1 Second point in the staff report dealt with the
2 standards regarding -- I may have these out of order --
3 but the standards regarding the printing of two languages
4 versus the printing of one language on the ballot for --
5 on the paper review for the voter.

6 The concern that we have with the standard is
7 that it will require longer ballots for voters that cast a
8 ballot in a non-English language. By doing that you give
9 a greater likelihood that they will have to go through a
10 two-page review of that paper record. They will be
11 required to have additional burdens placed on them in
12 casting their vote that English-speaking voters did not
13 have. I think that is a legal concern for the state that
14 ought to be considered.

15 I think there's also a practical concern and a
16 fiscal concern for counties who will then have to purchase
17 additional printers that they can replace on there if
18 paper supply is exhausted more readily through that
19 requirement.

20 I think that the burden should be placed on
21 county election officials to hire a Spanish speaker or a
22 Chinese speaker to review those records rather than
23 placing the burden on a poll worker and the voter in
24 complicating the process for the voting public. I think
25 that makes for wise policy and the human factors element

1 makes much more sense than the existing state requirement.
2 Although I fully understand why the state included that.
3 That in theory makes some sense. In practice it becomes
4 more complicated than it first appeared.

5 The other component is the -- we've got some
6 language.

7 ELECTIONS ANALYST WAGAMAN: -- review screen.

8 MR. CHARLES: -- the review screen. The state
9 standard has a requirement that the voter is able to
10 review the paper record and the review screen at the same
11 time. You can do that on this system. It currently does
12 do that. When the voter opts to make a change, their
13 selections are still viewed in the window, and they can go
14 back through their ballot and make changes, check the
15 review screen and confirm that it's accurate. We don't
16 think that that should be the first default method of
17 comparing the review screen because of the complication in
18 instructions that presents to the voter. Right now
19 when -- the first option when the voter prints that paper
20 record, the screen says, "Please review the paper
21 record" -- "Please review and confirm your paper record.
22 You can now make changes or cast ballot." That is a
23 clear, easy, well designed interface for the voter that
24 worked very well in Nevada and did not have complications.

25 My concern is if you clutter that screen with the

1 review screen and just of a small piece available to allow
2 them to confirm their vote or if you required that review
3 screen to have a scrolling function that would enable them
4 to go through the ballot or paginate through that ballot,
5 you are going to have a more difficult human interface.
6 You will have voters getting confused, whereas right now
7 you have a much cleaner design and we found that voters
8 have adapted well to it and have used it -- intuitively
9 used it well. So we think that that is a requirement of
10 the standards that we meet, but we don't think that it is
11 something that should be a mandate for all voters to see,
12 because of the complexity it adds on the human interface.

13 And, finally, I think it's important for us to
14 get full certification so we can have some certainty for
15 the counties, so we can move forward and allow them to
16 make their decisions. They are concerned about the
17 upcoming deadline, but we're concerned about the deadline.
18 We want to make sure that we have something available to
19 them to meet the standards, to meet the law, that they can
20 have as quickly as possible so they can implement it and
21 prevent any sort of time crunch, to the likes of which we
22 saw this last summer when equipment was not delivered on
23 time or was not certified on time and counties were left
24 in the lurch trying to figure out whether they go to an
25 alternate voting system, whether they go with the system

1 that they hope is going to be certified in time, the
2 result of which I think we all saw was problematic.

3 We need to have options for counties. We need to
4 have them quickly. I hope that the panel will support our
5 request for certification. And I think the State of
6 Nevada has demonstrated that this works very well. I
7 realize there's different standards in the state, but I
8 think we've -- we've met them to know that we haven't met,
9 we've erred on the side of feasibility for the voter, and
10 I think that bodes well for the system and for the likely
11 success in the counties.

12 So thank you for your time. I'd be happy to
13 answer any questions that you have as well.

14 CHAIRPERSON KYLE: Any questions of Mr. Charles?

15 PANEL MEMBER MILLER: Mr. Charles, could you
16 address the reel-to-reel, the sequential reporting a vote
17 issue with respect to VeriVote?

18 MR. CHARLES: Sure. The VeriVote printer
19 stores -- we found in testing and then I think it was
20 during the other process feel that the most reliable
21 method of storing votes was to have a reel-to-reel
22 concept. We also recognize the need to protect the
23 anonymity of the voter. So what we've done is we provide
24 a reel-to-reel design. We include a tamper evidence seal
25 so that the poll workers or observers who are watching

1 voters cast their ballots will not have access to that
2 paper record. That seal remains intact and is stored
3 until it's delivered to the county, at which time it's
4 broken and stored for recount purposes.

5 There are considerable parallels in election
6 administration for using a procedure to guarantee the
7 anonymity of the vote. There are Penal Code provisions
8 for attempting to violate the secrecy of the ballot.
9 There are parallels in absentee voting where the voter
10 sends in their ballot in a signed envelope with their name
11 on it. And we rely on the procedures to ensure -- in the
12 law to ensure the election officials deal with that
13 properly. Provisional ballots are the same way. All mail
14 precincts, the same way.

15 To interpret the standard that you can not rely
16 on standards to protect the secrecy of a ballot would be
17 to essentially prohibit mail balloting as we know it
18 today. And I don't think that that is a wise thing to do.
19 I think -- to do and have done for quite some time.

20 CHAIRPERSON KYLE: Mr. Charles, I'm going to ask
21 you to indulge the panel. I want you to stick around and
22 be prepared to resume this train of thought.

23 I'm going to ask for a five-minute break. I need
24 to make a technical modification to the configuration up
25 here. So we're going to take a five-minute break. And

1 then hold your thought, Mr. Miller, and we'll come back to
2 you and to you, Mr. Charles.

3 MR. CHARLES: Thank you.

4 (Thereupon a recess was taken.)

5 CHAIRPERSON KYLE: All right. Why don't we get
6 started.

7 Mr. Charles, would you'd please take the witness
8 stand again.

9 (Laughter.)

10 PANEL MEMBER CARREL: You're on the spotlight.

11 CHAIRPERSON KYLE: Mr. Miller, do you have any
12 follow up or further questions?

13 PANEL MEMBER MILLER: Not at the moment.

14 MR. CHARLES: May I add to that last response? I
15 left out one pretty important part on that.

16 CHAIRPERSON KYLE: Go ahead.

17 MR. CHARLES: One of the additional benefits in
18 addition to sealing that and all the procedures, if you
19 have a way to guarantee that no records have been added or
20 removed from that audit trail, you have an additional
21 layer of security that you don't have if you use a cut
22 ballot design, you drop them in a bucket. It's more
23 reliable for a lot of other engineering reasons. But
24 what -- when you go back to the county and you've lost one
25 or two cut ballot records, you know longer have the

1 guarantee of a 100 percent intact audit trail that you
2 have with the storage on the roll. It's also more
3 compact. You can also recount it more easily by attaching
4 it to a reader that a separate company's developed on our
5 behalf which -- not on our behalf, but they developed it
6 with our assistance, that would enable a higher speed
7 recount to be conducted where they can rescroll those and
8 do a machine recount of those records and expedite some of
9 the recount possess. So that there are official ways to
10 recount additional security features that are built for
11 that design.

12 PANEL MEMBER MILLER: Thank you.

13 CHAIRPERSON KYLE: Caren, did -- did anyone else
14 have any questions of Mr. Charles? I have one or two.
15 Let me ask mine, if you don't mind.

16 We'll go in this way, this order.

17 So you're asking for full certification. We've
18 heard from the staff their understanding of what the
19 various counties -- and we're going to hear from a couple
20 of county representatives. But I'd like to know what your
21 understanding of the various counties' intents would be
22 with regards to certification of any or all of the
23 components that have been submitted.

24 MR. CHARLES: They all need it to comply with the
25 state law. They all hope to get it as quickly as they

1 can. The counties of Santa Clara and San Bernardino have
2 arranged in their contract with us to receive the printers
3 at no additional cost to the contract that they have.
4 We'd like to be able to fulfill that commitment as soon as
5 we can to allow them to move forward.

6 For the short term the only county that is
7 planning to use it for November would be San Bernardino.
8 But we would like full certification so that not only our
9 existing customers but any other counties that are
10 intending to comply with Help America Vote Act can begin
11 their process and have an alternative available to them if
12 they choose to get the ball rolling right after this
13 election, which is my understanding many of them are ready
14 to get going. We'd like to be able to provide that if we
15 can.

16 CHAIRPERSON KYLE: Okay. Thank you.

17 Just as a little bit of clarification. On the
18 San Bernardino, is it your understanding that -- do you
19 have the same understanding that it will be in a very
20 restrictive limited fashion?

21 MR. CHARLES: Early voting at their office, yes.

22 CHAIRPERSON KYLE: Okay. Mr. Carrel.

23 PANEL MEMBER CARREL: When you say early voting,
24 they were planning using it for how long? Just election
25 day or for a few weeks before?

1 MR. CHARLES: If you'd asked me a month ago, it
2 would have been a few weeks before.

3 (Laughter.)

4 MR. CHARLES: But the calendar is ticking. And
5 they have -- just the time that it would take them to get
6 the code loaded on -- load the ballots and get voting. I
7 would assume just around about a week and a half
8 unloading -- I don't know if it's going to be through that
9 period or just at their office.

10 PANEL MEMBER CARREL: And you don't -- I mean I'm
11 just curious -- and I don't know if you know the answer --
12 as to why no one from San Bernardino is here today? I
13 mean I know they're planning for an election.

14 MR. CHARLES: Yeah, it's a --

15 PANEL MEMBER DANIELS-MEADE: Registration cards.

16 MR. CHARLES: It's a little bit of a busy time in
17 some of the county offices I understand, as it is for us
18 and for you as well. But I believe they were going to
19 send a letter of request for support for this
20 recommendation. I don't know if they have or not.

21 PANEL MEMBER DANIELS-MEADE: They did. They sent
22 us --

23 CHAIRPERSON KYLE: For the record, they did.

24 PANEL MEMBER CARREL: You talked about Nevada.
25 And I was there in Nevada, so I saw the response of the

1 voters. And I don't question the response of the voters,
2 nor do I question the I guess propriety of the system and
3 to do what it's supposed to do, based on the design that
4 you had. But you talked about the randomness of the -- or
5 to the lack -- I mean the issue of the privacy of
6 cartridges and keeping them in sequential order.

7 And has there been any discussion about trying to
8 come up with a work-around solution to achieve greater
9 randomness such as using several cartridges during the day
10 and switching them so that it's even less likely to
11 determine where in the order you are?

12 MR. CHARLES: There are ways to do it. Whether
13 the benefits outweigh the risks of adding complexity to
14 poll worker training and poll worker implementation, I
15 don't know. I think that when the federal process of --
16 the one issue that they asked us to revise was to remove
17 the machine ID number from the printout. I think that is
18 a mistake. I think it lessens the auditability of the
19 system. But they've asked us to put that in, so it's now
20 a configuration on it. But the State of Nevada does not
21 want to do that. They don't want to lose some of the
22 auditability that they've incorporated with the design.

23 But I think that the existing procedures are
24 pretty solid in protecting not only the access to those
25 records, but the ability of anyone to go back and attempt

1 to violate the secrecy -- it's much stronger in this
2 system than it is with other voting mechanisms that are in
3 place and used widely across the country.

4 PANEL MEMBER CARREL: You talk about the option
5 to speed up the recount using bar code. Just for
6 information, we originally had that in the first draft of
7 the standards to require a bar code be posted for each
8 vote record so that you could expedite the recount by the
9 counties that -- may recount, but removed it and thus we
10 did not require it be looked at as an option for the
11 counties to discuss with the vendors, so that if they
12 decided to use it for sorting ability, but obviously not
13 recountability, they would use that.

14 Back to the issue of languages. And I understand
15 the issue, which is clearly an issue over -- of ease for
16 voters versus ease for election administrators. And that
17 was an issue that was -- that decision, those two forces
18 were the two forces we dealt with on a number of policy
19 issues in establishing the standards, which was more
20 important for that situation, for that issue. Was the
21 ease of voter more important or was the ease of the
22 counting more important? And we got, you know, input from
23 the county election officials that it made more sense to
24 provide it in a bilingual fashion.

25 Now, as Mr. Mott-Smith said earlier, clearly the

1 name of the candidate is not going to be in two languages,
2 unless it's a -- I guess unless it's an Asian character.
3 But for this situation you're talking about
4 Spanish-English, and this would only be certified for
5 Spanish-english. And so you're talking about a situation
6 where the language is only Spanish even though, for
7 instance, Proposition 41 -- I don't know that they say
8 proposition in Spanish. But you're just adding one or two
9 words, I don't see how it's going to lengthen it
10 dramatically. And, yes, si, no, no.

11 I mean I'm not trying to be flippant. I'm just
12 saying that -- I understand your argument that it's going
13 to add language to it. We understood that too. We made
14 the determination that it was more valuable for the
15 administration of the election to have an English
16 translation on that so that the recounts could occur much
17 quicker.

18 I don't have any other questions. Just one more
19 comment, which is the bad -- you talked about the
20 standards being -- the passing Nevada standards and
21 passing federal qualification. I have no idea what
22 Nevada's standards are. So I -- and we don't -- I haven't
23 looked at them. I don't -- we didn't test against them,
24 so I can't say. But I do know that we were the first to
25 establish standards for a verified paper trail. We wanted

1 to establish standards that provided both verification for
2 the voters but also accessibility for disabled voters to
3 comply with our interpretation of HAVA and the State
4 Attorney General's interpretation of HAVA, disregarding
5 what the Feds might have said, and also the State Attorney
6 General's interpretation of State law.

7 CHAIRPERSON KYLE: Mr. Jefferson.

8 PANEL MEMBER JEFFERSON: Thank you.

9 So I guess I'd like to distinguish a discussion
10 in principle about this -- the concern about the
11 sequential nature of the VeriVote design from discussion
12 of any particular motions that might be on the table
13 later. So this is on the principal discussion now.
14 Because I'm, as you know, deeply concerned about that
15 design feature.

16 The Sequoia voting systems -- DRE systems, when
17 they record the votes electronically internally, they
18 randomize them, right?

19 MR. CHARLES: Correct.

20 PANEL MEMBER JEFFERSON: Why do they do that?

21 MR. CHARLES: There is a requirement to ensure
22 the privacy of the voter. It's not -- there were
23 different standards in the 1990 standards with the 2002
24 standards. But there is a requirement for some form of
25 protection of voter --

1 PANEL MEMBER JEFFERSON: Right. And all three --
2 well, all of the three big vendors, Diebold and ES&S and
3 Sequoia, do this and tout it in fact as a feature of their
4 electronic voting systems.

5 Now, the thing that concerns me is that having
6 then -- then making a paper record alongside this,
7 parallel to it, which is completely sequential, it seems
8 to me it completely undermines whatever privacy value that
9 the randomization of the electronic vote records provides.
10 Does it not?

11 MR. CHARLES: No.

12 PANEL MEMBER JEFFERSON: Why not?

13 MR. CHARLES: Because there is no record --
14 especially in California there's no record of the order in
15 which a voter votes. There's no record of the machine on
16 which they vote. There is no -- there's statutory
17 prohibitions against attempting to violate the secrecy of
18 that ballot. The poll workers who see how the voters
19 vote, the observers who see how the voters vote do not
20 have access to the paper records. Those records are sent
21 back to the county. The county then uses them in a
22 recount. So I think there --

23 PANEL MEMBER JEFFERSON: There are -- that is
24 true --

25 MR. CHARLES: -- are significant legal and

1 procedural protections to ensure the secrecy.

2 PANEL MEMBER JEFFERSON: Right. But all of that
3 was true without a paper record. Without a paper record,
4 you know, the order of voters voting was not recorded.
5 And the poll workers are not the same people -- you know,
6 who might observe the order of voters, not the same people
7 as the county officials who might conduct a recount. That
8 was all true without the paper record. And yet all three
9 manufacturers touted that the randomization of the order
10 of storage of electronic ballots is a voter secrecy
11 feature. So it seems to me you can't get away from the
12 fact that printing the ballots in sequential order of
13 people voting on that machine does completely undermine
14 whatever secrecy value was added by the randomization of
15 the electronic copies.

16 MR. CHARLES: Well, I disagree. To say that it
17 completely undermines the secrecy is a gross
18 overstatement. The procedures protect -- they protect it
19 for multiple other voting processes. When you look at the
20 locked room of a precinct count optical scanner, you can
21 see which order those ballots dropped in. And when you
22 look at a provisional ballot, you see the signature of the
23 voter. When you look at an absentee ballot, you see the
24 signature. When you see an all-mail precinct, then
25 there's a signature of the voter on that.

1 This is greatly more secure than those other
2 options that are available in the marketplace today.

3 PANEL MEMBER JEFFERSON: So let me come at it
4 from a different angle now.

5 I agree with you that other forms of voting, FAX
6 balloting, provisional balloting, absentee balloting, all
7 have systematic privacy issues which can only be handled
8 procedurally.

9 What I am interested in is preserving the last
10 form of voting, namely, you know, mainstream precinct
11 voting, which -- I would like to preserve a system
12 that has no privacy issues. So that if privacy is the
13 voter's primary concern, as it is for lots of people, that
14 they at least have some mode or ability where it's simply
15 impossible, not just difficult or not depending on
16 procedures or something, but impossible to reconstruct how
17 a person voted.

18 So I'm concerned, for example, that if people
19 wish to observe some celebrity voting and they discover
20 that the celebrity, you know, voted number second on
21 machine number 3. You don't have to have a full record of
22 that. If you just want to know how one person voted, it's
23 easy enough to observe, you know, where and when they
24 voted. And then it is not -- the information is just not
25 lost to the world of which ballot they cast. Whereas it

1 is if their ballot is put into a -- you know, into a
2 ballot box with all the other ballots or if their ballot
3 is randomized in electronic copy and a randomized paper
4 ballot -- paper image audit trail is produced.

5 I would like to have a system in which we do not
6 have to depend on the proper application of procedures,
7 where voters have -- where the structure of the voting
8 system makes it impossible by design for people to
9 mismanage or to circumvent the privacy requirements. I'd
10 like to have at least one voting option which has that
11 property. And if this becomes the standard precinct
12 voting system for many precincts in California, I think we
13 lose that.

14 You don't agree?

15 MR. CHARLES: Not at all. I don't mean to
16 belabor this just a little more. Well, I think we may
17 have to agree to disagree. But the standards are that
18 voters must have their privacy secure. And the standards
19 that exist contemplate procedures in a variety of other
20 voting systems and with this system that are used to
21 enhance the security of a system, used to enhance the
22 protection of the voter, used to enhance the accuracy of a
23 system.

24 I think that what we need to do is make sure that
25 what is used in a polling place works, it captures the

1 voter intent which is reliable. We have seen failures in
2 other systems that use more complicated and more fragile
3 moving parts and technologies. We need to make sure that
4 this works and that it's sufficiently durable. We need to
5 balance that with the requirements for accuracy and
6 secrecy. We can address those through procedure -- we
7 have addressed them through procedure. And I think that
8 to mandate a technology that has -- or -- and a particular
9 approach to this is to invite problems or invite the
10 voting public to have no option at all for voter
11 verification if the systems don't work, if they break on
12 election day. That doesn't help anybody. We need to make
13 sure they work. And we need to make sure that voter
14 secrecy is protected, there's no doubt about that. That's
15 why we've included a tamper evidence seal with a unique
16 serial number. We've included procedures to make sure
17 that the records are handled appropriately at the county
18 level. There are statutes that protect that.

19 There are a great deal more protections than we
20 had in with other systems. And I think that to ignore
21 those in reviewing this is to -- is to really address one
22 of the things that the market place needs to work out
23 rather than a standards body that is charged with making
24 sure that it is possible to do this and it's possible to
25 protect secrecy of the ballot. And it does that.

1 But I think -- I think we've had a discussion
2 about this before and we see that differently. But
3 this --

4 PANEL MEMBER JEFFERSON: But there are other
5 companies who have systems -- voter-verified systems which
6 have cutters. Avante has one. I've even seen, ES&S had
7 a -- what's the -- prototype -- thank you -- system a year
8 ago. I'm not sure what became of that.

9 This isn't -- you know, and every gasoline pump
10 in the United States and every DRE in the United States
11 has cutters on rolls of paper. You really think that this
12 is a sufficient engineering impediment that we should
13 reduce our standard of privacy from absolute impossibility
14 of recovering a voter's ballot to one of procedural
15 safeguards against it?

16 MR. CHARLES: I think a system must work. I
17 think that the systems that have been developed so far
18 have a great deal of complications for poll workers.
19 They've demonstrated that there are difficulties with that
20 technology. I think that you protect the secrecy of what
21 we have. I think it does that very well. And I think
22 that we know it works and that the clock is ticking --
23 this is not an unlimited budget item for counties either.

24 We also have to factor in that they need to be
25 able to review those records. Cut ballot records where

1 ballots are lost are a disaster waiting -- in the event of
2 a recount.

3 The ability to recount curled up slips of thermal
4 paper versus the ability to take a compact record that we
5 know is intact, it has all of its integrity intact because
6 it is a continuous form, provides added layers of security
7 and readability on the county side.

8 There are, you know, things that you lose by
9 implementing cut ballot records and there are things that
10 you gain by doing that. I think that we need to find the
11 appropriate balance, and I think we've found that with
12 this and it works very well. I'd hate to see something
13 that works as well as it does, that accomplishes the goal,
14 which is to make sure the voter has a voter-verifiable
15 paper record that protects them in the case of -- in the
16 event of an audit, and I'd hate to see that lost because
17 we quibble over the optimal ways to protect secrecy when
18 secrecy is assured and guaranteed for a number of
19 important steps.

20 PANEL MEMBER JEFFERSON: So let me, if I may, get
21 quantitative here for a moment as to the degree of secrecy
22 that we are giving up. Because, you know, I've been
23 working with this for a long time and, as you know, I'm
24 seriously concerned about it.

25 Suppose there are 250 voters in a precinct, and

1 they put all their paper ballots into one big paper ballot
2 box and shake it up. Then no matter what you do, you
3 cannot know which of those 250 ballots you personally
4 cast, meaning any particular person you want to choose.
5 The degree of anonymity of that ballot is one in 250.
6 That's pretty good protection.

7 By contrast, if there are four voting machines in
8 a precinct and I just observe that you cast the first
9 ballot on machine number 1 -- or maybe I don't even know
10 which machine you cast it on, but I know you cast the
11 first ballot of the day. So it's on one of the four
12 machines. Now I know that your ballot is the first one on
13 tape number 1 or the first one of four -- on four tapes.
14 So instead of having my vote lost in a sea of 250 ballots,
15 it's one of four, or maybe I can narrow it down to one of
16 one. And maybe it's, you know -- you don't see that as a
17 huge change in the secrecy properties of the voting
18 system?

19 MR. CHARLES: If we just stored those records and
20 gave anybody who's standing there in the polling place
21 full rein and had no procedural requirements that -- just
22 because you saw somebody who voted first on a machine does
23 not mean that you will ever have access to see how that
24 person voted on that paper record. To do so would be a
25 felony.

1 To see somebody attempting to compare a list of
2 the order in which people voted to a paper record would be
3 a felony. Maybe it's a misdemeanor. But it's a -- it
4 ought to be a felony.

5 PANEL MEMBER JEFFERSON: I'll agree with that.

6 MR. CHARLES: And I think -- we all recognize
7 that secrecy is important. We also recognize that this is
8 a great deal -- I hope we all recognize -- this is a great
9 deal more secure than the way in which about half the
10 voters in many counties cast their ballot today.

11 PANEL MEMBER JEFFERSON: One last comparison to
12 make. And then, Mr. Chairman, I'm going on.

13 CHAIRPERSON KYLE: That's okay.

14 PANEL MEMBER JEFFERSON: We have a statute in
15 California that if you are casting a paper ballot, either
16 punch or mark is it, if somebody discovers a mark on that
17 ballot during the counting process that might identify the
18 voter, that ballot is void. And the reason for that
19 historically is that that voter might either be exposed to
20 coercion and the mark allows him to be identified, or the
21 voter could be selling his vote and the voter allows him
22 to be -- allows the voter to collect payment for voting.

23 We have a statute in those cases that if it's
24 possible to identify -- and not by the poll worker, mind
25 you, because the mark would be discovered by somebody

1 doing a counting of the ballots later or a recount of the
2 ballots later. If at any time a mark is discovered that
3 potentially identifies the vote, that vote is void.

4 Now, my concern here is that if this system
5 were -- and I approve of that rule, I might add, that
6 statute. And it's a statute in many states in the United
7 States. Now, it seems to me that if I know that your vote
8 is number 37 on reel 3 in this precinct, or number 1 on
9 the reel, that your vote is essentially marked. And an
10 insider, the very same people who have to void your ballot
11 if they find a mark that might identify you on a paper
12 ballot, those very same people now have to ignore the, if
13 you will, virtual mark, the sequence number. They don't
14 make your ballot void -- they don't make it all void --
15 under the procedures that you're suggesting. So it seems
16 to me that, once again, even though it is a felony and
17 even -- to reveal how someone voted if you're an insider
18 and even though there are procedural safeguards against
19 it, nonetheless the statute is that in the other voting
20 systems your ballot is void to protect voters against --
21 and then protect the public against identification of
22 ballots.

23 But we're losing that protection here in an
24 exactly comparable situation. In both cases it's insiders
25 whose access to the ballots are the concern.

1 MR. CHARLES: Yeah, I think we just disagree on
2 that. I don't believe that there is any greater risk with
3 this system, and there is actually a lower risk with this
4 system than with others. And I hear your arguments. I
5 disagree with them. And I think the -- the federal
6 standards have qualified this system and I believe that
7 they meet those standards and procedures that have assured
8 us on a number of other cases.

9 PANEL MEMBER JEFFERSON: You're right, that the
10 federal standards do not in fact mandate randomization,
11 even the electronic copies, let alone they say nothing
12 about paper copies.

13 It's my belief -- and correct me if I'm wrong --
14 that this is because other states do not have privacy
15 standards as stringent as California's and that in order
16 to get a paper -- maybe federal standards, which didn't
17 require a revision of those state standards, the standards
18 were written more loosely, sort of a consensus standard on
19 that point. Is that -- that's my understanding. Is that
20 your understanding?

21 MR. CHARLES: That may be. I don't know the
22 genesis of the federal standards right now.

23 PANEL MEMBER JEFFERSON: Mr. Chairman, thank you.
24 I'm done for now.

25 CHAIRPERSON KYLE: If you could stick around, Mr

1 Charles. And then we may have a couple other questions
2 from the end.

3 Let's go to --

4 PANEL MEMBER MOTT-SMITH: Mine's unrelated, so go
5 ahead.

6 PANEL MEMBER CARREL: One question for staff on
7 the randomization issue, which I know is a federal issue.
8 But with regard to our standards, that was not an issue
9 with regard to our standards, correct?

10 ELECTIONS ANALYST WAGAMAN: What our standards
11 require is that it complies with federal -- both federal
12 and the state requirements. So the federal requirements
13 are deemed by whatever the Feds say. We don't know
14 exactly what they say because we don't have the report.
15 But that's a requirement of our state standard is that it
16 applies to the federal requirements. I'll just relate
17 that.

18 For the state standards, the system as
19 configured, based on the staff's interpretation, would
20 meet that randomization in the situation where there are
21 multiple machines in the precinct.

22 PANEL MEMBER CARREL: But if there's one --

23 ELECTIONS ANALYST WAGAMAN: But if there is one
24 machine, then you'd have a sequential storage vote with no
25 randomization between each machine. So the issue in which

1 Mr. Jefferson described where you know who voted first,
2 period, you would know which machine they were on by
3 default, that would then create that issue.

4 So if the Panel were to choose to certify the
5 system and modify the staff recommendation, staff would
6 then recommend that one of the requirements be that there
7 be at least two machines in any precinct using the system.

8 PANEL MEMBER CARREL: Oh.

9 ELECTIONS ANALYST WAGAMAN: Under the current
10 procedures.

11 PANEL MEMBER CARREL: Under the current
12 procedures. Or that procedures be modified to figure out
13 a way to randomize one's -- if there's only one in a
14 precinct. And I don't think it's that difficult if you
15 have two or three printer cartridges and randomly change
16 them during the day to provide randomization.

17 ELECTIONS ANALYST WAGAMAN: Correct, if that
18 procedure was added -- that process was added to the
19 procedures, and staff would deem that compliant.

20 PANEL MEMBER CARREL: Okay. Mr. Mott-Smith.

21 PANEL MEMBER MOTT-SMITH: I wondered if you had
22 any comments on the staff recommendations on the other
23 three components of the system?

24 MR. CHARLES: I mentioned early on my concern
25 with the staff recommendation on the bilingual -- or is

1 that the piece, the two languages at one time with a paper
2 record?

3 PANEL MEMBER MOTT-SMITH: No, the win WinEDS, the
4 3.0.134, the 4.3.320, and the card activator.

5 MR. CHARLES: No, only that we would like them
6 all certified with the VeriVote printer to the extent
7 that -- well, I think the request that we put is for full
8 certification of all those pieces.

9 CHAIRPERSON KYLE: Thank you.

10 If you'd stick around, we may have some further
11 questions a little later.

12 I'd like to ask a couple of county clerks to come
13 up.

14 Kathy Darling from Shasta County please.

15 MS. DARLING: Good morning. I have a prepared
16 statement. If you guys want to ask me questions when I'm
17 done, feel free.

18 My name is Kathy Darling. I'm the County Clerk
19 and Registrar of Voters for Shasta County. I appreciate
20 the opportunity to speak to about this very important
21 decision you have before you today.

22 I want to try to give you snapshot of what it's
23 like to stand in my shoes. I think this is really
24 relevant, because the county elected administrator was the
25 county clerks, the county registrars, are the people who

1 provide elections for our voters in this state.

2 Our job is to serve the public and to ensure that
3 every election we administer is conducted legally, fairly,
4 and that every vote cast in our county is counted
5 accurately. We work for the voters in our counties. Not
6 for the State or even if they're appointed for the Board
7 of supervisors. We work for the voters.

8 Our most basic and compelling responsibility is
9 to offer the right of franchise, the most important
10 fundamental right of every American citizen. We take this
11 very seriously and are deeply and profoundly cognizant of
12 the weight of this responsibility. This is a difficult
13 period to work in elections for all of us.

14 In Shasta County I am one of ten full-time staff.
15 As of today we have a little more than 93,000 registered
16 voters, which is a new record for Shasta. And we spent
17 the last years adjusting and readjusting to an environment
18 of constant change.

19 Our punch card voting system, which performed
20 flawlessly for 30 years, was decertified. In good faith
21 and with considerable effort we purchased a new voting
22 system, which was federally and state certified. State
23 certified by this office, by this panel and this very same
24 process.

25 Then the rules changed. In April our shining new

1 voting system was again decertified unless certain
2 security measures were complied with. We have complied,
3 and will comply for November, and we'll use that system in
4 November for the fourth time successfully and error free.

5 The Secretary mandated the use of the VVPAT in
6 his directives to the counties. He sponsored legislation,
7 and that legislation was signed into law by the Governor
8 just about a month ago.

9 Now, the staff report presented to this Panel
10 recommends non-certifying the only federally certified
11 system that allows DRE counties to comply with the law.

12 How can we engage voters in a process that seems
13 to be built on a base of quicksand? This action has the
14 potential to further erode the confidence they have worked
15 so hard to engender in the elections process, both in
16 Shasta County and across California.

17 The new voting system mandated by contrary
18 decertification and HAVA was initially received very well
19 by the voters in my county. Over the past several months,
20 as a result of the climate of fear that has been
21 promulgated and encouraged by both this Panel and the
22 Secretary himself, voters have been vocal in their support
23 of a paper backup copy of their electronic vote.

24 Earlier this month I was invited to demonstrate
25 one of our new voting machines to a local community group.

1 I think the social secretary wasn't really very well in
2 touch with her membership. Because when I got there I
3 discovered that not only was the entire group of about 40
4 already registered to vote; they were all also without
5 exception absentee voters. They were not very interested,
6 and told me directly that they would not go to the polling
7 place and vote on electronic touch screen machine without
8 a paper backup. And I have talked to many other voters
9 with the same situation.

10 My office is very small. When a voter calls with
11 a complaint or a problem, I usually talk to them myself.

12 Explanation of the addition to this system that
13 we use in Shasta, which obviously is Sequoia, when I
14 explain to people who feel anxious about the security of
15 their vote on a long-term touchscreen, but we will have
16 available when it's legal a printer to verify their
17 selections, they are without exception pleased and
18 relieved to hear that that's coming.

19 And they don't understand why it's not available
20 now and today. I don't expect to use it in November
21 obviously.

22 When the Secretary's directive came out to add a
23 VVPAT to our voting system, I was not in favor of it. It
24 seems to me to be an addition to a system that I am fully
25 confident that's not necessary. I have every confidence

1 in my system. And the addition of VVPATs in our county
2 will spend precious county dollars that we can ill afford.

3 But I have come to believe that the cost cannot
4 be a deciding factor when you're talking about voter
5 confidence in the election system. There is no price on
6 the belief of the voters that their vote is counted
7 accurately and correctly.

8 And it's a real burden on my office for me to be
9 here today. When ten of us trying to enter -- I think we
10 have a couple thousand voter register cards still to be
11 entered and absentee ballots that have to be examined and
12 signature checked, I just feel it was very important that
13 somebody from county come here today and talk to you about
14 these issue.

15 I would respectfully request that this Panel and
16 the Secretary consider carefully the impact and
17 ramifications of denying certification of this system.

18 As someone said earlier, we're now 11 days away
19 from one of the highest interest, most closely examined
20 elections of our time. I do not imagine that this
21 proposed action will have any positive effect on that
22 election or those in the future.

23 Voters in my county have told me that they want a
24 VVPAT. It is mandated by law. I've sat in this very room
25 so many times and listened repeatedly to voting activists

1 of every persuasion vigorously lobbying this panel to
2 mandate a paper record.

3 The course of events of the past 12 months follow
4 a logic that I cannot explain to the voters of my county.
5 We are told we must use a tool and now we are in danger of
6 losing access to it.

7 CHAIRPERSON KYLE: Thank you.

8 Mr. Mott-Smith.

9 PANEL MEMBER MOTT-SMITH: Thanks, Kathy. I
10 wanted to not ask you a question but respond to what you
11 said in one sense. And that's the inability to explain
12 the logic, because I understand what you're saying. But I
13 want to tell it to you from a different perspective.
14 Because I heard this yesterday as well, that a little
15 while ago we were being told that there was no interest in
16 a paper trail. And now we're being told that there's so
17 much interest that it's potentially a an issue. And the
18 statement has been that there's a fear that has been
19 generated by this panel and by the Secretary. And
20 respectfully I want to characterize that not as a campaign
21 to engender fear, but it was a recognition of what the
22 voters in California wanted. And I think it's fair for
23 people to acknowledge that the Secretary saw that possibly
24 before many local elections officials saw it. And so what
25 we're seeing now of the issue coming forward is not the

1 result of anybody instilling fear; it is the result of --
2 a natural result of voters becoming aware of an issue and
3 making, as you have said, their opinions and preference
4 for some form of paper trail known.

5 So I just wanted to say that.

6 CHAIRPERSON KYLE: Mr. Carrel.

7 PANEL MEMBER CARREL: Yeah, I would echo that. I
8 mean with all due respect, I am confused. Over the past
9 two years we have tried to -- I think everything that has
10 happened from this office has moved from step to step to
11 step to step. And county elections officials have been
12 completely inconsistent about this issue from beginning to
13 end. I know that counties are not unilateral. I do know
14 that the Clerks Association has been unilateral.

15 And, you know, having been one of the key
16 staffers in the middle of this, when you say that this is
17 quicksand, I take offense to that, because we established
18 standards. We're the first state to establish standards,
19 that there was a quicksand, so that we knew what the
20 standards were, so the vendors knew what the standards
21 were, so the counties knew what the standards were. And
22 we didn't do this unilaterally. We worked with a working
23 group from the counties. We worked with a working group
24 from technology, a community. We worked with the vendors.
25 We sought advice from the vendors what would work and what

1 wouldn't work. And we didn't want a quicksand, which we
2 knew was possibility because we were hearing -- and I know
3 that's true in other states right now. And, thank God, we
4 do have standards not only for this but we -- I think we
5 have among the highest standards for running our elections
6 in California than most other states. And I'm thankful
7 for that.

8 I would reiterate what John said about fomenting
9 fear. I don't believe we did that. I think we responded
10 to the fear that was already out there.

11 Like I said about the county reaction, you know,
12 we were -- I am hearing up till last week from several
13 county officials who still are adamantly opposed to a
14 paper trail, even though it had no "no" votes in the
15 legislations passing it. It had no "no" votes in the
16 Legislature. And the Governor signed it. And now we're
17 hearing -- getting E-mails this morning -- I'm shocked
18 because I'm getting E-mails this morning to pass paper
19 trail, to support it. That what message will this send if
20 we don't pass it. And I'm thinking, you know, we -- it's
21 as if symbolism is the only thing that matters and not the
22 standard.

23 I'm very supportive of -- and I saw it in
24 Nevada -- of this system because I think it has a
25 tremendous amount of potential to solve some of the

1 concerns that the counties have, that the voters have.
2 I'm also concerned though that it doesn't get to a hundred
3 percent of the standards that we know we needed because of
4 the working group and the disabled and others. However,
5 you know, what I'm hearing from you is a hundred percent
6 isn't necessary.

7 And I'll leave it at that.

8 CHAIRPERSON KYLE: Mr. Miller.

9 PANEL MEMBER MILLER: Just a brief comment.

10 I want to thank you for making your trip. We
11 really appreciate your input. And we've talked about this
12 paper trail at length over the past several months. And I
13 really appreciate your being here in support of a paper
14 trail.

15 Thank you.

16 CHAIRPERSON KYLE: Mr. Jefferson.

17 PANEL MEMBER JEFFERSON: Thank you for coming.

18 I'm one of strongest advocates in the United
19 States for voter-verified paper trail. So as you -- it
20 pains me somewhat to be offered a system which has a bona
21 fide voter-verified paper trail, but which on the other
22 hand has what I see as another major flaw and which I
23 would prefer to see corrected before we certify it.

24 Now, we are always in an election cycle. But at
25 this particular time we are as far away from the major

1 statewide election as we can get. I'm thinking of the
2 March 2006 primary.

3 MS. DARLING: June.

4 PANEL MEMBER JEFFERSON: I'm sorry. Is it June
5 2006?

6 MR. CHARLES: We just changed it again.

7 PANEL MEMBER JEFFERSON: Well, that's all right.
8 June. Even farther.

9 So we have as long a lead as we ever, ever have
10 to do this right. And we were told, for example, a year
11 ago -- we, meaning the Electronic Voting Task Force --
12 that if we were to recommend or require a paper trail,
13 that it couldn't possibly be ready in time for this
14 November's election. It turned out not to be true.
15 Sequoia has produced it and it's deployed statewide in
16 Nevada.

17 You know, the estimates of the engineering lead
18 times and the marketing and certification lead times are
19 generally exaggerations for this. We have enough time to
20 do it right. And I would much prefer to see an
21 engineering modification to preserve that, not only voter
22 verification, but also the same degree of privacy and
23 accessibility and language accessibility that we have in
24 other systems before we certify. At least that's where
25 I'm coming from.

1 CHAIRPERSON KYLE: Thank you.

2 Ms. Darling, two things. One, do we have a copy
3 of your written statement?

4 MS. DARLING: (Witness shakes head.)

5 CHAIRPERSON KYLE: If you could --

6 MS. DARLING: I could E-mail it to --

7 CHAIRPERSON KYLE: Yeah, that -- if you could
8 E-mail it, it would be appreciated. That way it would
9 make it a formal part of the record, and which I'd like to
10 do.

11 And, secondly, I just want to thank you for
12 taking the time out of your busy schedule for coming down.

13 MS. DARLING: I'm happy to do so. If I can respond
14 to a couple of the comments.

15 I would say, first of all, that the Association
16 is very much divided about a lot of the issues, and this
17 is just one of them.

18 Part of that I believe comes from a difference of
19 manageability and size. I can do things very manageably
20 that San Bernardino County and Riverside County because of
21 the nature of the size of the county cannot do. And
22 vice-versa. And I really -- you know, Shasta County
23 bought this system, science and contract, in May of 2003,
24 purchased this system. The voting systems -- I'm sorry --
25 the VVPAT standards I believe were published for the first

1 time February of this year.

2 So it really does feel to some of us at the
3 county level, and especially the nine decertified
4 counties, that the rules are changing midstream. And that
5 may be not the responsibility of this Panel. It may --
6 I'm sure we can lay a lot of the responsibility at the
7 federal level for their failure to push funding down at
8 CEAC members and that kind of thing.

9 But, you know, the bottom line is we have to get
10 the job done everyday. And I absolutely think that if
11 you're going to waive administrative difficulty over the
12 voter rights and presentation to the voter, the voter wins
13 every time.

14 CHAIRPERSON KYLE: Thank you very much.

15 MS. DARLING: Thank you.

16 CHAIRPERSON KYLE: Santa Clara County.

17 MR. CHANTRI: Philip Chantri, the Election
18 Services Coordinator from Santa Clara County.

19 CHAIRPERSON KYLE: Would you mind Spelling your
20 last name for the record.

21 MR. CHANTRI: Chantri, no problem.
22 C-h-a-n-t-r-i.

23 I respect the Panel and I thank you for allowing
24 me to speak today.

25 Four years ago at this time I was on a campaign

1 trail. I left that campaign side of politics about three
2 years ago for what I thought was the calm, constant,
3 election administration experience.

4 My second election was the gubernatorial recall
5 on a punch card system. And then I implemented the
6 Sequoia voting system.

7 Santa Clara County has 5500 machines. I am in my
8 capacity as Election Services Coordinator responsible for,
9 among other things, training the election officers of
10 Santa Clara County.

11 In a little over two years we've gone from having
12 20 classes to this time we will have 118 three-hour
13 classes countywide with a training staff of over 20. That
14 involves taking, you know, four or five vans out every day
15 to four different locations in the county; thirty Sequoia
16 machines, card activators, audio component, EO manuals,
17 troubleshooting manuals, audio voting guides. It goes on
18 and on and on. It's become extremely complex.

19 So one of my primary concerns was the ease of use
20 and is the ease of use of the VeriVote.

21 Thankfully I had the opportunity to travel to
22 Nevada along with Santa Clara County. I had hired an
23 AVVPAT program implementation manager. And I have taken
24 the role of AVVPAT Chair for Santa Clara County. The
25 three of us, along with the assistant registrar, traveled

1 to Nevada. We're extremely impressed with the ease of
2 use. Again, that was my primary concern.

3 Overwhelmingly when we asked voters what they
4 thought, they liked it. Overwhelmingly when we asked
5 election officers about their training, they were
6 extremely impressed and they had no problems with it. In
7 fact, all of the team leaders with whom we spoke expressed
8 ease of using connecting the VeriVotes to DRE touchscreen
9 voting machine. Overall the VeriVote experience was very
10 positive for the election officers and voters.

11 On election day something else I'm tasked with is
12 I am in charge of the field technicians we have in the
13 field on election day. We have approximately between 80
14 and 100 that travel around the precincts and they
15 troubleshoot the technical problems.

16 Again, something I'm extremely concerned with is
17 ease of use, the ease of replacing these, if they run out
18 of paper, if there's a paper jam. There are other things
19 besides the VeriVote in this certification that I'm very
20 happy to see. I'm very, very happy to see functionality
21 adjustments to provisional voting on the card activator,
22 very happy to see functionality adjustments to audio
23 voting of activating the smart card at that level instead
24 of at the machine.

25 We've added easily an hour -- 45 minutes to an

1 hour to our training just to explain audio voting, to
2 activate the audio voting component in all of our
3 precincts to ensure that it will work well in our
4 precincts. We have a very powerful and, rightly so,
5 constituency of disabled voters in Santa Clara County that
6 have been clamoring for it. They like it. And we need to
7 make sure it works on election day.

8 I could go on and on. But what I'm asking the
9 panel for is time. We have 5500 machines in Santa Clara
10 County. We need time to play with the certified system,
11 to practice with the certified system, to do voter
12 education outreach with the certified VeriVote. I respect
13 the comment that there's a long span of time between now
14 and the next California primary. We do not want to
15 implement in the California primary. We would like to
16 implement in a smaller election before that so that we can
17 use it a couple times before that.

18 I respect the panel. I thank the panel for their
19 time. And I'm available for questions.

20 CHAIRPERSON KYLE: Thank you.

21 Any questions from the panel?

22 Thank you very much.

23 And if you have anything in writing -- I don't
24 know if -- I didn't see -- thank you.

25 Public comment. Kim Alexander.

1 MS. ALEXANDER: Good morning. I'm Kim Alexander
2 with the California Voter foundation.

3 I appreciate this discussion that we're having
4 here today and realize that California, as is often the
5 case, is attempting to set a high bar when it comes to new
6 voting innovations. And I think the standards that were
7 developed by the Secretary of State's Office that grew out
8 of the Secretary of State's ad hoc touchscreen task force
9 did that, by not only having a voter-verified paper trail,
10 but specifying that it must be accessible to disabled
11 voters and it must be accessible to linked voters who vote
12 in non-English and that the ballots must be randomized.
13 And as I recall the discussions on randomizations, it was
14 something that the late Bob Nageley was very adamant about
15 in our task force meetings. He was very concerned that
16 that output of the voter-verified paper record be
17 randomized.

18 I did a little bit of homework this morning and
19 was checking the California constitution because it
20 actually is a constitutional right that California voters
21 have, that voting shall be secret. It's not just a matter
22 of statute or a matter of practice. It's Article 2
23 Section 7 of the California Constitution. And It simply
24 says voting shall be secret. So we're left to figure out
25 how to ensure that.

1 I share David Jefferson's concerns. And we've
2 had lots of long discussions about this issue of
3 randomization.

4 And I have mixed feelings about the VeriVote
5 system, because on one hand I'm very eager, as many paper
6 trail advocates are, to get a voter-verified paper trail
7 on the market and available for use as quickly as
8 possible. And I too made the trip to Las Vegas, as many
9 of us made our pilgrimage over there to go see the
10 VeriVote system in operation. And I was quite impressed
11 with the feedback that I heard, at least in the early
12 voting environment, from the poll workers and the voters
13 alike.

14 But my hope is that California standards will
15 drive the national standards. And that's been the case
16 before. In fact California developed voting system
17 standards before the federal government developed any
18 voting system standards. And Bob Nageley, who developed
19 the standards for California, played an instrumental role
20 over a couple of decades in using those California
21 standards and has experience developing them as a
22 foundation for developing the 1990 Federal Voting System
23 standards.

24 So, once again, California can play a role in
25 establishing high standards. And we ought to because, as

1 we all know, the federal standards don't do an adequate
2 job in many, many areas of providing a baseline for
3 security on a number of features in all of our voting
4 systems, whether it's transferring ballots via modem or it
5 is having a vote counting server, whether it's electronic
6 ballot or optical scan connected to the Internet. These
7 are basic security provisions that don't exist in federal
8 standards. And even though we can impose them in
9 California, as a California voter I have no peace of mind
10 that other states that claim to follow the federal voting
11 system standards are preventing those kinds of risks that
12 we have identified.

13 So we as California being a state that is in the
14 forefront on this issue, I feel have a special
15 responsibility to provide the leadership and set a high
16 standard for the voter-verified paper trail. That said, I
17 hope that we can find some way to allow San Bernardino to
18 demonstrate this new system in this election season on
19 limited basis. A couple of things that we could do, for
20 example, to allow that would be to limit San Bernardino to
21 use -- to only have the system be used for voters who come
22 into early voting who won't need the audio headset. As
23 long as there's another DRE in the early voting site that
24 provides the audio headset feature, then we wouldn't be
25 imposing anybody's -- restricting anybody's rights by

1 having a VeriVote system set up with an audio component
2 disabled so that we don't have to violate the California
3 standard on that count.

4 Similarly, if language is an issue, we can do the
5 same kind of thing. But based on the discussion that we
6 heard and also the comments from Kathy Darling, we know
7 that all counties are not the same, they come in different
8 sizes, and they have different needs. And it might be the
9 case that the language issue whether you print out the
10 voter-verified paper record both in English and voter's
11 language of preference or you have a translator at the
12 county elections office translating non-English paper
13 records, maybe that's a choice that could be left up to
14 the counties. Maybe that's something that could be done
15 at a procedural level based on what the county is planning
16 to do. I would imagine in larger counties they might have
17 translators. And in a smaller county having some ballots
18 that are in both English and Spanish might not be such a
19 hassle. So that's one way we could resolve that.

20 As far as the side-by-side screen, that's
21 something that I do hope that we can develop. But I also
22 think it's the kind of feature that could be probably
23 easily changed in the future through some programming to
24 enable the voter to have that side-by-side review to be
25 able to look at a full summary of all their votes beside

1 the voter-verified paper record.

2 I am concerned about the use of bar codes. I
3 think it's beneficial to have a voter-verified paper
4 record that can be read electronically. But I am
5 concerned that we might reach the point where all we do is
6 read them electronically. And what we're trying to get
7 away from is relying exclusively on secret software to
8 tell us who wins and who loses elections. So I'm not
9 completely opposed to the use of bar codes but I think we
10 have to tract very carefully on this issue because the use
11 of bar codes could potentially in the future undermine
12 what the goal here of having a voter-verified paper trail
13 is, which is to have a paper record that can be read with
14 human eyes and not exclusively being machine readable.

15 And in closing I would like to remind you that
16 the voter-verified paper trail is not only for the voter.
17 It serves two purposes: It gives, first of all, the voter
18 the ability to verify that their electronic ballot was
19 recorded as they intended it; and, secondly, it gives
20 elections officials the audit tool that they need to
21 verify the final results at the close of the elections.
22 As we know, an electronic ballot, as all ballots, go
23 through a whole long process of transition from the
24 polling place to the county elections office; and there
25 are a lot of places along the way where our ballots could

1 be compromised. So having a ballot voter-verified paper
2 record gives the elections officials the tool they need.
3 In California it's the tool that they need to satisfy the
4 one percent manual count requirement. And whatever we do
5 with our standards on voter-verified paper trail, I urge
6 you to keep in mind that it's both of those needs that we
7 need to satisfy, the need of the voter to verify that
8 their own ballot was reported properly and accurately, and
9 the need of the elections officials to verify that the
10 overall election results were accurate as well.

11 Thank you.

12 CHAIRPERSON KYLE: Thank you, Ms. Alexander.

13 Any questions or comments from the Panel?

14 Hearing none, I'm going to close the public
15 comment period and move to further discussion or comments
16 from the Board.

17 And we currently have the staff report and
18 discussion and a recommendation from us. I'll entertain
19 motions from the panel.

20 Mr. Mott-Smith, it looks like you're prepare
21 to --

22 PANEL MEMBER MOTT-SMITH: Yes, I would like to
23 make a motion.

24 The motion would have two parts: First is to
25 move the staff recommendations for the three system

1 components, WinEDS, Edge, and Card Activator.

2 CHAIRPERSON KYLE: I'm sorry. Would you mind
3 speaking right into the microphone and a pinch louder.

4 PANEL MEMBER MOTT-SMITH: There would be two
5 portions to the motion: One is to move the staff
6 recommendations as they relate to the WinEDS, Edge, and
7 Card Activator systems. And the second is to move a
8 conditional approval of the VeriVote to be used in
9 conjunction with those components.

10 And by way of explaining before I get to what
11 those conditions are exactly, I want to say that thinking
12 back a year from today, the task force that Marc Carrel
13 was leading was trying to decide if it was possible to
14 have a paper trail with a voting machine, if it was
15 possible to have something that would not jam, would not
16 create long lines, would operate in a normal polling place
17 environment. And then if it was possible, when it would
18 be possible.

19 And my recollection was that we were talking
20 about 2010, we were talking about 2008, we were talking
21 about 2006. And here we are in October of 2004 looking at
22 a working model that has been tested in at least one state
23 and is now being proposed for certification in California.

24 I want to congratulate the vendor to be the first
25 through the door. And I hope that the door is actively

1 opening and closing after you with all of the other
2 vendors.

3 Bottom line for me is that I find this to be
4 tremendously exciting. This is what we've been asking
5 for. This is what the Secretary's been looking for. This
6 is a moment to be seized, not to be neglected or ignored,
7 in my view.

8 However, I do think that we need to acknowledge
9 that this system does not meet the standards that we have
10 set for voter-verified paper audit trail. It does give
11 the voter a paper record. It does let the voter verify
12 the paper record. It is user friendly and it is secure.
13 And actually when I say, "we," I want to be clear that
14 that's not just the Voting Systems Panel, it's not the
15 Secretary of State. It is a panel of county
16 representatives. And I don't remember the exact number,
17 but there were many who participated. There were some who
18 declined to participate even though that they were
19 invited. And it included technical experts. And the
20 result are these standards. These standards are the best
21 we could do. But they have not been tested. They have
22 not been compared against any actual use.

23 I'm assuming that we will as we gain experience
24 modify the guidelines to reflect greater knowledge as we
25 go along.

1 So I would like to move the approval of the
2 VeriVote to be used in conjunction with the other system
3 components with the following conditions:

4 The first is that it's one time, one place; that
5 is, San Bernardino County for the November 2nd, 2004,
6 election. And, just parenthetically, we made this same
7 condition as an approval for the DRE system that was first
8 used in Alameda County. The purpose of this is to be able
9 to gather some information, some experience, bring it back
10 and potentially make any modifications on a going-forward
11 basis.

12 Secondly, that it's only at the headquarters of
13 the county election office.

14 Thirdly, that there be multiple machines. And
15 the third and fourth conditions are both related to
16 randomization. There be multiple machines. And that
17 there be a system set up where the printers on the
18 machines are randomly changed through the day in order to
19 increase the randomization. So, 1) voters go to multiple
20 machines. They're not directed just to one machine. 2)
21 The printers on the machines are randomly either
22 interchanged or there are different printers put on and
23 moved so that -- I think you get my point.

24 Where am I? On five? That these would be --
25 that voters would be taking care of by professional

1 election office staff. So that these are people who are
2 not necessarily inspectors or people who are trained for
3 once-a-year experience. But that these are people who
4 have responsibility as regular employees within the office
5 and can respond to whatever needs to be done.

6 Sixth, that it is only for the English and
7 Spanish version at this point. I think we do need to take
8 another look at what, if any, issues arise out of the
9 bilingual ballot issue with the other languages.

10 Seven, that the Secretary of State be on site to
11 monitor this. And I have to confess, it was my
12 understanding that San Bernardino was interested in this
13 only on election day. If they're interested in a longer
14 term period, we're going to have to work out, you know,
15 what that monitoring means. But if it is for early voting
16 for any period of time before the election, then we need
17 to work out how the Secretary of State's going to be
18 involved in monitoring that.

19 And then, eight, by December 15th, I would like
20 to have a report from our staff, a separate report from
21 the vendor, and a separate report from the county
22 basically describing what we've learned, what we've
23 observed about the process in order for us to go forward
24 with this in the future.

25 I'm sorry I've made that such a long motion.

1 PANEL MEMBER MILLER: I'll second the motion, Mr.
2 Chairman.

3 PANEL MEMBER JEFFERSON: Could it be separated
4 into two parts?

5 CHAIRPERSON KYLE: We're being asked if we can
6 separate it into two parts. Why don't you elaborate on
7 what you mean. I'm not sure what you mean by that.

8 PANEL MEMBER JEFFERSON: Well, there were two
9 parts, the second of which was very long, the first of
10 which was to recommend certification -- or to recommend
11 the staff report. Can I suggest these as two separate
12 motions and we deal with them separately?

13 PANEL MEMBER MOTT-SMITH: To me it's one motion.
14 But I -- if the panel wants to separate them.

15 PANEL MEMBER CARREL: So we have a motion to
16 separate the motion?

17 PANEL MEMBER JEFFERSON: Yes, right. Because,
18 you know, I can easily see myself supporting the first
19 part and not the second part.

20 PANEL MEMBER CARREL: Then you need a second on
21 that motion.

22 PANEL MEMBER MILLER: I'll second both motions.

23 CHAIRPERSON KYLE: Let's have a little discussion
24 on the second motion.

25 Mr. Jefferson, do you want to elaborate for a

1 second. Then I'd like to hear --

2 PANEL MEMBER JEFFERSON: Well, so, with regard to
3 the potential use of this VeriVote system in San
4 Bernardino County for the upcoming general election,
5 that's subject that, you know, I have a lot to say about.
6 And I'm concerned about -- for several reasons. One is
7 there a lot of issues that were not talked about in your
8 motion, such as what is the recount procedure; are the
9 test ballots that are cast -- are they to be cast in an
10 early voting situation, in which case is that eligible for
11 the one percent recount at all? If it's to be cast only
12 on election day, is it considered a precinct and,
13 therefore, is eligible for the one percent recount
14 procedure? And in fact I'm -- most of my comments have to
15 do with the recount procedure. So if this is to be
16 considered an experiment, I would actually like to see
17 this pretend precinct used as a recount precinct. Or at
18 any rate, like to stipulate that we go through that
19 process. And they never like to talk about the recount
20 procedure when there's a -- when we don't have the
21 randomized ballots. And I would like to suggest how that
22 might be done. And I would also like to talk about the
23 precedence that we are setting by actually certifying a
24 system for use in a real general election, albeit one
25 precinct in one county, that is in contra-distinction,

1 which we all agree, to the standards that we set for this
2 very kind of system.

3 I think it's a bad precedent and I am concerned
4 that the take-away message will be that Nevada and
5 California have certified this system for use in the
6 general election of 2004 before all of these issues have
7 been properly discussed and there's been proper, you know,
8 national as well as regional and statewide discussion on
9 it. We got the paperwork on this voting system at 5
10 o'clock yesterday. And I really think we are just rushing
11 headlong into something that's unnecessary.

12 I would have no objection if San Bernardino
13 County wanted to use this system in an experiment where
14 the votes did not count. And I don't think we need to
15 certify if that's the nature of the experiment. And we
16 can do, you know, a lot more creative things.

17 I would also like see, before we do this, reports
18 from the State of Nevada about their -- and any
19 experiences they with the recount procedure. There's
20 just -- I think we're going -- here we are ten days before
21 the election and we're introducing a whole new category of
22 voting system and certifying it. And I think it's way
23 premature. It's just not necessary. And that's why I
24 think it should be severed. There's much more to say.

25 CHAIRPERSON KYLE: Okay. That makes it pretty

1 clear.

2 I'm going to recommend -- I'm going on speak to
3 severing it so we can move forward and have a more
4 elaborate discussion. I want to just see if there's any
5 discussion on -- if we were to sever it, on moving the
6 staff recommendation on the first three components, the
7 WinEDS, Edge and the Card Activator.

8 PANEL MEMBER CARREL: I don't think there's
9 any --

10 CHAIRPERSON KYLE: Okay. So they're not done
11 with it.

12 I am going to as the Chairman sever the motion,
13 Mr. Motion Maker, and call the question on the first
14 motion, which would be to adopt the recommendations of the
15 staff vis-a-vis the WinEDS 3.0.1.34, the AVC Edge 4.3.320,
16 the Card Activator 4.3.320.

17 Do I have all my numbers right on that, or do you
18 monitor --

19 ELECTIONS ANALYST WAGAMAN: An extra point. It's
20 3.0.134.

21 CHAIRPERSON KYLE: Okay. Thank you.

22 So that we would basically adopt your
23 recommendation, but strike the last sentence of your
24 recommendation which says, "Staff does not recommend the
25 certification of the VeriVote VVPAT."

1 And then in a separate motion we'll take up that
2 issue.

3 All those in favor?

4 (Ayes.)

5 CHAIRPERSON KYLE: Any opposed?

6 Any abstentions?

7 The "ayes" have it.

8 Thank you for that friendly amendment.

9 Now, let's take up the second motion. And I'd
10 like to continue discussion of that, including
11 entertaining further suggestions for conditions that might
12 move us towards the possibility -- if we could reach a
13 possibility of implementing something and as a pilot
14 project in San Bernardino. And if we can't, we can't.
15 But you had a couple concrete suggestions, Mr. Jefferson.
16 And there may be a few others.

17 ELECTIONS ANALYST WAGAMAN: Staff had one
18 question for the motion maker.

19 Did the motion include the original ten
20 conditions from the first part for the VeriVote, we'll
21 supply that as well?

22 CHAIRPERSON KYLE: It did. That was number 1,
23 that it use all of the conditions as in 1 above.

24 PANEL MEMBER JEFFERSON: So to continue, Mr.
25 Chairman. I guess my first recommendation would be that

1 we encourage San Bernardino County or any county who
2 wishes to experiment with this on votes that are not --
3 that do not count in the general election. And I have no
4 objection to that. I think in fact I would encourage it
5 strongly.

6 Secondly, I would suggest that we need to pay
7 serious attention to the recount procedures. That is to
8 say, if that is the time when the long reel of ballots is
9 unrolled from that -- from the cannister in which it is
10 sealed an that seal is broken and officials have access to
11 the ballots and in the order in which they were cast, we
12 need to specify a recount procedure and procedures
13 involved -- that preserve secrecy. This is if we insist
14 on doing this at all. I mean my recommendation is we do
15 not do this for this general election. But if we must,
16 then some -- a procedure, for example, in which the
17 recount of a precinct involves physically separating the
18 ballots from one another. Cut them at that time for the
19 recount, and only for a recount. Leave them in the
20 cannister otherwise. But require that as a procedure.
21 And then randomizing them and then counting them. Now,
22 that of course, I am well aware, defeats the possibility
23 of a machinery count. To me this is a price that you pay
24 to preserve voter privacy.

25 There are other things that you can do as well.

1 You can --

2 CHAIRPERSON KYLE: Before you go on to those
3 other things, Mr. Mott-Smith did you want to address the
4 recount procedure?

5 PANEL MEMBER MOTT-SMITH: Tony or Lisa, correct
6 me if I'm wrong, but I don't believe that voting in the
7 office of the elections official constitutes voting in a
8 precinct for purposes of the one percent manual recount.

9 Two things --

10 PANEL MEMBER MILLER: I think you're right.

11 PANEL MEMBER MOTT-SMITH: So a) it's a random
12 process. You couldn't pre-select it on purpose. And b) I
13 don't think it would be in the universe that is to be
14 selected from for the purpose of the one percent manual
15 recount.

16 PANEL MEMBER JEFFERSON: And I thought that might
17 be the case. And so what I -- but then my suggestion is,
18 when -- a recount issue is the critical privacy issue
19 here, as far as I'm concerned. And so if we're really
20 interested in testing this and if we are serious about it,
21 that's where the content of the privacy problem is. The
22 instant that seal was broken on that cannister and that
23 thing is unrolled, that's where you have your privacy
24 problem. So I would like to see that problem addressed.
25 Otherwise, you seem to be suggesting -- I mean even if

1 that's not in the one percent recount, there is a chance
2 that a recount will be required in that election among
3 those ballots, even if it's not because of the one percent
4 rule. And so we need some kind of procedure for that
5 eventuality.

6 So I was going to suggest what do you think about
7 machine cutting of the ballots, separating them and
8 randomizing them as a recommended recount procedure in
9 that case?

10 PANEL MEMBER MOTT-SMITH: I'd like to expand the
11 conversation, because I'm very curious as to what other
12 people think. But I could I think personally live with
13 that as an experimental procedure for this one time.

14 CHAIRPERSON KYLE: Let's have a few other
15 comments.

16 Mr. Miller.

17 PANEL MEMBER MILLER: Well, as the seconder of
18 the motion I could agree to that too. This is a pilot
19 project. And it makes sense to I think follow that
20 approach that Mr. Jefferson suggests. It may not be the
21 approach ultimately taken with respect to paper trail.
22 But with respect to pilot project, I could certainly
23 support that.

24 PANEL MEMBER CARREL: If I could comment.

25 We're talking about a pilot project which would

1 help us -- I hope the purpose here is to help us
2 understand what are standards we need to achieve, then
3 also help us understand how to successfully implement a
4 voter-verified paper trail system in the California
5 county.

6 And, first of all, let me say that I do think it
7 would be useful to do a recount out of those machines to
8 actually -- we're doing parallel monitoring in that
9 county, but to also do a recount to verify that the vote
10 on the paper is the same as the vote on the machines. And
11 so a recount would be useful.

12 I don't think it makes any sense to cut them.

13 PANEL MEMBER MOTT-SMITH: What do you call it, a
14 recount or a comparison? A recount has an official
15 formal --

16 PANEL MEMBER CARREL: Okay. A comparison of the
17 vote.

18 I don't think it makes any sense to cut them
19 because that's not in our procedures. And if we determine
20 based on the utilization of the current procedures -- the
21 procedures of the system and standards that we have that
22 they're not adequate, then we could look into changing
23 them to require the cutting. I don't think the cutting --
24 I understand the privacy concerns that Mr. Jefferson
25 brings up. But, again, I have to weigh the privacy

1 concerns versus the election administration.

2 And I am worried about what Mr. Charles stated
3 earlier, where if you lose one of them, you undermine the
4 recount -- of the system. And so I'm concerned that
5 adding that component in creates an added variable that
6 could potentially create a problem and not necessarily
7 solve a problem.

8 Let me though remind people that this is not the
9 first -- would not be the first time a voter-verified
10 paper audit trail system pilot project was done in
11 California. Maybe one county in a general election for
12 president. It was done -- no, it wasn't president. It
13 was for governor. But it was done two years ago in the
14 general in Sacramento county, and it was only for early
15 voting, and it was Avante's system, their first generation
16 system. They have submitted their second generation
17 system, which does cut the paper into a ballot box. They
18 have submitted their second generation system for federal
19 qualification and it has received federal qualification.
20 And it's coming up -- they have submitted it to us as
21 well. So it will be before us at some point.

22 There's also another company, Accu-Poll, which
23 also is federally qualified.

24 So I agree with Mr. Mott-Smith that there are --
25 once this door is open, there will be others.

1 The difference between the Avante system and the
2 Sequoia system is that the Avante system was never tested
3 under the standards that we adopted for a voter-verified
4 paper trail -- for a successful voter-verified paper audit
5 trail. And so -- and it's never been submitted for that.
6 So we would have -- because they didn't exist at that
7 time. But this would not be -- this would not set a
8 precedent in an election, follow a precedent for the
9 implementation of a new type of system to be used for
10 early voting, to be used in one county, to be used on a
11 limited basis.

12 And while I do have concerns about fully
13 certifying this system because of the accessibility, and I
14 do have concerns about certifying the system because it
15 doesn't meet 100 percent of the standards, I do see a
16 benefit in doing a pilot project so that we can see
17 whether our standards are useful or not useful or if they
18 actually hinder the process, and to actually see how we
19 can implement them in the successful implementation of a
20 system, unlike Avante, a system that is likely to be mass
21 produced in the near future. The Avante -- the second
22 generation may happen, but the first one was never going
23 to be produced on a -- wide basis.

24 So I actually think for a pilot project that we
25 get the report from the vendor, we get a report from the

1 county, we get a report from our own people and understand
2 what the voter reaction is, understand the implementation
3 from the county, that it would be extremely valuable for
4 us as we move forward. And I think extremely valuable for
5 the counties, who are looking for the future to see the
6 implementation.

7 This would not be a widespread thing -- I agree
8 with Mr. Mott-Smith. It has to be limited to only two or
9 three machines. It has to be limited to election --
10 county election staff. But even under those conditions we
11 could gain a lot of knowledge and could -- it could be
12 very beneficial.

13 PANEL MEMBER MILLER: Mr. Chairman, this is a
14 very important issue raised by Mr. Jefferson. Could we
15 have Mr. Charles respond to it very briefly with respect
16 to the issue of the recount, if he wishes to.

17 CHAIRPERSON KYLE: Please do.

18 MR. CHARLES: Two points on that. The State of
19 Nevada did a recount on a number of machines in every
20 county. They counted all of them and they mention a
21 hundred percent.

22 If the recommendation is to cut paper records
23 individually, I think that adds a logistical nightmare
24 when you roll that out on the larger scale. Maybe it's
25 possible. But if that's your concern, somebody's -- I

1 mean if you take this conspiracy that somebody's going to
2 see who voted 20 seconds somewhere and they're going to
3 follow that machine forever and then they're going to find
4 that paper and they're going to figure out that that was
5 from machine 22 and -- maybe that's the person that's
6 cutting your record and you have to be worried about them.
7 I just think we can take this issue and extend it beyond
8 the reasonable scope of what would happen in an election
9 environment. We really do have to balance the
10 administratability, if that's a word, to this. There are
11 procedures I think that we can protect them in ways other
12 than cutting the ballots.

13 But I think it would be entirely manageable to do
14 a comparison of all of those voted records in 3, 4, 5
15 machines. And, you know, whether it's -- I don't if they
16 have a polling place at the county or whether it would be
17 early voting at the county or election day voting at the
18 county. It may -- that might be a poll site -- a poll
19 site that would be open too. But I'm not sure what their
20 plans are.

21 But I would, you know -- I would suggest against
22 doing that cutting at this stage and see how it goes. And
23 take that feedback into the report. That would be my
24 recommendation.

25 CHAIRPERSON KYLE: When you say there are two or

1 three other procedures, what are those two or three other
2 procedures?

3 MR. CHARLES: To?

4 CHAIRPERSON KYLE: To cutting.

5 MR. CHARLES: To cutting?

6 CHAIRPERSON KYLE: Yeah, you said there's two or
7 three alternatives to cutting that would here --

8 MR. CHARLES: Protections. There are other
9 protections in place, such as the randomization, not to
10 keep track of the machines, as Mr. Mott-Smith mentioned.
11 If you switch the printers around from machine to machine,
12 it's going to be pretty difficult for anyone to figure out
13 which voter was on which machine and which order. That's
14 already difficult to do. It's already under seal. It's
15 already not available to the people who do the recount.

16 But if you skip through those first several
17 steps, I think the swapping around of the printers can be
18 done. And I think it would be important in the
19 post-election report to determine if that is something
20 that is feasible to do in an election environment when
21 there are voters coming in throughout the day. But to do
22 that just so the Panel's clear on how that is done. You
23 power off the machine, you unplug the printer, slide it
24 off at the side of the touchscreen, and then you slide
25 another one on, plug it back in, turn on the power. It's

1 fairly easy to do. It's the procedure for replacing
2 paper. But it's just a logistical headache on election
3 day that you -- you certainly wouldn't want to do during
4 high traffic time.

5 PANEL MEMBER JEFFERSON: So that the comparison
6 that I would like to suggest is the printer switching
7 procedure, which would have to be done in 100 percent of
8 the precincts if the system were widely deployed, versus
9 no printer switching, no effort -- no additional effort at
10 all on the part of the poll workers, no additional
11 training for this on the part of the poll workers. But in
12 the one percent of the counties -- or, sorry -- one
13 percent of the precincts plus any others that are
14 recounted for some other reason, only in that one percent
15 would you do the cutting procedure at the time of a
16 recount. It sounds to me like, you know, 50 times as much
17 logistical complexity to switch printers in every precinct
18 in the state that uses Sequoia systems as opposed to the 1
19 or 2 percent that are recount afterwards.

20 MR. CHARLES: I would defer to the election
21 administrators on what the burden would be. My gut sense
22 tells me it's probably easier to unplug something and plug
23 it back in than it is to unroll something and cut
24 individual records in the hundreds per machine across the
25 entire county.

1 There are also concerns, that if you start
2 swapping printers, you lose some of that ability to audit
3 individual machines for accuracy. You also run the risk
4 of, if you swap a printer and you're putting it on to a
5 machine in an early voting environment where all of the
6 ballot styles may be voted, you -- if you're doing a
7 recount that includes ballots from that precinct, you're
8 going to want to be able to find that printed record. The
9 bar code would help you do that eventually. But in the
10 interim, if you're swapping machines around, you really
11 want to make sure you can find those paper records if
12 that's what you need in a recount. I'd hate for somebody
13 to think that they couldn't find ten records because they
14 never looked at the right printer because they didn't know
15 that was one that was swapped from one to another. So
16 it's also another concern.

17 PANEL MEMBER JEFFERSON: I think that's a good
18 point.

19 PANEL MEMBER CARREL: Let me explain though. I
20 don't think there's any intent to swap printers between
21 machines. I think the idea is to have, as you would
22 already have one extra printer per precinct anyway, to
23 have one or two extra printer cartridges per each machine
24 and each machine rotates among those printer cartridges
25 randomly, the ones assigned to it, so that you've achieved

1 randomization -- a greater randomization for that machine.
2 But there's no swapping between machines. That way if
3 there is a problem with a machine, you can locate it to
4 these three printers, and it's not mixing votes between
5 machines.

6 MR. CHARLES: There, you can do that. And it
7 would require counties to buy more printers, which I guess
8 we're okay with. But --

9 (Laughter.)

10 MR. CHARLES: I don't think it's essential.

11 PANEL MEMBER CARREL: Well, I think we need to --
12 I mean as a pilot project we want to see how that works
13 and whether it's beneficial or not.

14 ELECTIONS ANALYST WAGAMAN: One note, Mr. Carrel.
15 Remember, under the federal system, unless the printer's
16 labeled, there's not going to be a way to tie the one
17 machine to paper records.

18 PANEL MEMBER CARREL: If we would have to -- I
19 don't understand why the Feds, as Mr. Charles said
20 earlier, decided to remove the identification connection
21 between a printer and the machines. Because if there is a
22 problem with the machine, you would want to check that
23 printer to see if the printer reflects what --

24 ELECTIONS ANALYST WAGAMAN: It was to -- for a
25 recount to be done as a precinct as a whole rather than on

1 the individual machine. Which for audit purposes you
2 would want to do the individual machine, but for the
3 privacy purposes --

4 PANEL MEMBER JEFFERSON: Yeah, I think that is
5 the reason.

6 PANEL MEMBER CARREL: But from an audit -- and it
7 says in HAVA though that it has to have a manual audit
8 capacity for each machine. So you don't have a manual
9 audit capacity if you disassociated the printer from the
10 machine because the printers effectively would become part
11 of the machine. So I don't understand that. And we would
12 have to require that the code of the data -- implication
13 code of the machines is located somewhere in the printer
14 cartridge so that they can be tied together if necessary,
15 but maybe hidden under something.

16 MR. CHARLES: Configuration of it right now.

17 PANEL MEMBER CARREL: Okay. So if it's not
18 eliminated from the system, it's already available.

19 The other thing that I should note is while this
20 would be a pilot project, while this would be used for the
21 benefit -- to study the implementation and for the benefit
22 of the counties and then for us, we have to understand one
23 important thing: If there is a recount countywide because
24 a race is too close, we have to make sure that the
25 procedures that are in place adopted -- that we adopt

1 today are the ones that work, comfortable with for a full
2 recount if there is a race that is too close in that
3 county, because this could be used for that recount.

4 MR. CHARLES: Mr. Carrel, if I might note, that
5 one of the Panel's standing conditions on certifications
6 is that the state has the opportunity to amend procedures
7 as they see fit. And I think that would be helpful if
8 there is something after today that the state thinks is
9 essential to incorporate prior to that election or prior
10 to any recount, that the latitude is there.

11 PANEL MEMBER CARREL: And I understand that.

12 I just disagree with the cutting. I think it
13 adds a logistical problem. There's going to be enough
14 problem -- not problem -- but enough potential
15 complications learning this new system. And there -- this
16 may be very close in San Bernardino -- there may be a
17 number of close races in San Bernardino. I don't know.
18 But, you know, for two or three machines I think we should
19 study how -- if it works under our current system. And if
20 we decide that it didn't achieve enough privacy -- enough
21 secrecy, that we evaluate that later and see how that
22 might work. I don't advocate doing it now. It only adds
23 more complication at this point.

24 CHAIRPERSON KYLE: Further discussion -- Mr.
25 Kercher.

1 PANEL MEMBER KERCHER: I'd like to stake out a
2 little more conservative position here, suggesting that
3 the panel ought to be very conservative about violating or
4 excepting -- I guess it would be an exception to its
5 standards; that its tests for that ought to be a
6 "compelling need" rather than "highly desirable". And, in
7 fact, I would suggest that "highly desirable" as it's been
8 characterized here is around the value of the experiment
9 which we have spent the last 20 or so minutes trying to
10 craft that experiment in a manner that makes sense.
11 Again, I remain uncomfortable, that we have risen below
12 that -- the value of this experiment and of the safety of
13 that experiment to support the idea of moving away from a
14 standard which was done through a much more complex
15 deliberate with outside input.

16 CHAIRPERSON KYLE: Thank you. Good point.

17 PANEL MEMBER MILLER: Mr. Chairman, I've long
18 supported the idea of having a paper trail. I've always
19 been incredibly, incredibly admiring of the Secretary of
20 State for taking the leadership nationally. He spoke.
21 Some listened initially. Many opposed. And then most
22 people, many election officials ended up supporting his
23 point of view.

24 I missed the bus to Las Vegas. I didn't get to
25 go. So I didn't see the voting system operate. I

1 understand it operated successfully. But I really do want
2 to see it operate. And I think it's very appropriate to
3 have a pilot project in California. I'm very mindful of
4 Mr. Jefferson's concerns with respect to voter privacy.
5 It is a felony in California to violate the privacy of a
6 voter, be it an elections official or any other person.

7 I really think that the procedures suggested
8 mitigate against the violation of the voter secrecy, as
9 well as the criminal sanction that would be associated
10 therewith.

11 I really think we should move forward with the
12 pilot project with the conditions stated. I am still a
13 little questionable with respect to the paper cutting
14 condition, whether that's really necessary or not. As Mr.
15 Carrel suggested, it's not necessary. Mr. Jefferson
16 suggested it is. I don't know. Before we vote I'll have
17 to decide.

18 But I support the paper trail, I support the
19 pilot project. And I wish that I had been able to go to
20 Las Vegas.

21 CHAIRPERSON KYLE: For more than one reason.

22 (Laughter.)

23 CHAIRPERSON KYLE: With the gambling tendency you
24 have.

25 I want to -- before I turn it back over to you,

1 Mr. Jefferson I want to just -- looking through the
2 conditions that you listed, Mr. Mott-Smith, there were two
3 that seemed slightly problematic that we're hung up on.
4 And the others I think there are no controversy, and I'll
5 be with those in just a second.

6 But it goes to your point -- the ones that are
7 slightly problematic are the recount procedure and how to
8 protect that process.

9 And we had one suggestion today, your suggestion,
10 Mr. Mott-Smith. And the other one was machine cutting of
11 the ballot. Both to attempt to address the same issue.
12 So it seems we need to resolve that.

13 And the other issue had to do --

14 PANEL MEMBER CARREL: What machine can we use?
15 Manually?

16 CHAIRPERSON KYLE: There's manually.

17 PANEL MEMBER JEFFERSON: I meant not tearing.

18 CHAIRPERSON KYLE: No, I understand, using a
19 cutter or scissors.

20 And that the other -- second issue was
21 designating the county as a random recount precinct, and
22 that -- we couldn't do that under the random aspect
23 because it wouldn't be random. However, I'm wondering if
24 we can just stipulate it as a precinct to be recounted,
25 irrespective of the random -- in addition to it. Just say

1 we want to recount there.

2 PANEL MEMBER MOTT-SMITH: What I was
3 suggesting -- I guess the answer to that is we probably
4 could. But what I was suggesting is that we designate it
5 as a requirement -- a comparison, not using the vocabulary
6 as a code that actually says recount.

7 CHAIRPERSON KYLE: So how would that be written
8 up? When we mail this to --

9 PANEL MEMBER MOTT-SMITH: We would require that
10 there be as a part of the canvass a comparison of the
11 electronic versus the paper records.

12 PANEL MEMBER CARREL: On those machines?

13 PANEL MEMBER MOTT-SMITH: On those machines.

14 PANEL MEMBER CARREL: If we were to designate the
15 elections office in San Bernardino which is using these
16 two or three machines as a precinct that needs to be
17 recounted, you have to remember they probably have six or
18 seven other machines without a voter-verified paper trail
19 in it. That would be included as well if you did the
20 whole precinct. And I think that that would undermine the
21 purpose that we're trying to seek here, which is to
22 understand whether the voter-verified paper trail is
23 presenting an accurate reflection of the votes on those
24 machines. So we can get totals for those machines and
25 then compare it to the paper trails for those machines. I

1 think that would achieve what we're trying to achieve
2 without using the whole office as a precinct.

3 CHAIRPERSON KYLE: Okay. Mr. Jefferson.

4 PANEL MEMBER JEFFERSON: I'm going to toss
5 another suggestion possibly into the discussion.

6 With FAX voting in some states, when a voter
7 actually does FAX their ballot, they are expected to
8 understand that their ballot is not as private as other
9 balloting methods. And in some cases they actually have
10 to sign a form saying they understand that.

11 One thing that I think would be perhaps
12 appropriate here is for the voters who choose this method
13 of voting in such an experiment, that they be notified
14 that we don't guaranty the same standard of privacy for
15 this particular method of voting as we do for other
16 systems. And then voters can volunteer on that basis.
17 And we acknowledge that they don't meet our own AVVPAT
18 standards.

19 PANEL MEMBER CARREL: Interesting.

20 PANEL MEMBER MILLER: I would disagree with you,
21 Mr. Jefferson, in that regard. I don't think that's
22 appropriate because I think there are safeguards to
23 preclude compromising voter secrecy, unlike a FAX ballot.
24 There's compromising inherent in that process. And I
25 don't think that is true with respect to this voting

1 system.

2 PANEL MEMBER JEFFERSON: Well, just how is it
3 unlike a FAX ballot? It seems very similar to me at the
4 recount time.

5 PANEL MEMBER MILLER: I think that it's very --
6 would be very difficult, especially if we were using
7 multiple printer, that approach, very difficult to
8 ascertain how anybody has voted. That's not true with
9 respect to FAX ballots, especially at the front-end. At
10 the back-end there are a number of safeguards in place
11 with respect to protecting voter privacy. At the
12 front-end they may not exist.

13 I really don't think they're comparable.

14 PANEL MEMBER JEFFERSON: Well, as an example --
15 to take Mr. Carrel's example of shuffling a set of
16 printers to the -- well, a particular set of printers
17 assigned to a particular machine. So, if I know you're
18 the first voter on machine one, then I know your ballot is
19 the first vote on one of the three printer cartridges.
20 And so out of the universe of votes, I've narrowed your
21 vote down to number one. If I'm there observing the
22 recount, as I might like to be, I would not like to have
23 the burden of knowing, you know, which of -- that it's one
24 of these three ballots. And if they all happen to vote
25 for the same person for president or senator, I know how

1 the person voted.

2 PANEL MEMBER MILLER: But you have multiple
3 machines. That's one of the conditions, you have multiple
4 machines. So you don't know which --

5 PANEL MEMBER JEFFERSON: But Mr. Carrel's
6 suggestion was that it not shift printers between
7 machines.

8 PANEL MEMBER CARREL: But they do have multiple
9 machines.

10 PANEL MEMBER MILLER: But you have multiple
11 machines. So --

12 PANEL MEMBER JEFFERSON: Well, so we would have
13 to talk about -- we don't a requirement, for example, that
14 voters be assigned the machine randomly. It's a poll
15 worker discretion. And we don't have a procedure -- we
16 haven't yet decided on the procedure for shuffling
17 printers among machines. If you have K printers and N
18 machines, it matters how big K is and it matters whether
19 you shuffle them within -- you know, across all the
20 machines or you assign them to a machine. There's been no
21 analysis of any of this. I would like to see this
22 analysis. I would be happy to contribute to this
23 analysis. But it matters hugely for a privacy point of
24 view exactly what the printer shuffling procedures are and
25 how many printers there are per machine and so on.

1 PANEL MEMBER CARREL: I'm not a mathematician. I
2 acknowledge that. I don't even pretend. And I know that
3 there's been criticism of our one percent manual recount
4 as not achieving complete statistical randomness. But we
5 do one percent manual recount, unlike other states, and so
6 we at least have some benefit to it.

7 And that's sort of what we're trying to achieve
8 here, is some benefit of randomization, augmented by the
9 felony, if you know of -- if you know where someone voted,
10 augmented by the other procedures in place to protect the
11 privacy of the vote and keeping, you know, the average
12 person from seeing the ballot.

13 PANEL MEMBER MOTT-SMITH: And it was a part of my
14 motion that there be multiple machines and that the voters
15 be assigned to the multiple machines, not all to one but
16 randomly assigned to the --

17 PANEL MEMBER CARREL: I don't mean to move off of
18 this because this is so compelling. But -- and I'm sure
19 there's still more discussion on it. But I think there's
20 one other condition that I'm concerned about that I don't
21 know if it was mentioned, which is regarding accessibility
22 and to -- while Mr. Jefferson makes the point that we let
23 people know that their privacy may not be protected, I
24 think it's clear that accessibility is not achieved by
25 this and we should not have the other audio components

1 connected to these two machines. So that if someone is
2 blind, they're directed to a different machine which has
3 audio capacity and people aren't lacking accessibility for
4 verification.

5 PANEL MEMBER MOTT-SMITH: I'm not sure I see the
6 point of that. You have no less accessibility as a blind
7 voter to the AVVPAT system than you do to the regular
8 system.

9 PANEL MEMBER CARREL: You have no. --

10 PANEL MEMBER MOTT-SMITH: You may not be getting
11 any more, but you're not getting any less. And why you
12 would deny someone the ability to use the audio because
13 they're not getting more, I'm not clear on.

14 PANEL MEMBER MILLER: And also you have the
15 additional safeguard with respect to sighted voters who
16 are able to look at the printout. They're able to
17 verify -- that would provide some credibility for the
18 visually impaired voter that the machine is operating
19 correctly. I agree with Mr. Mott-Smith.

20 CHAIRPERSON KYLE: I'm going to raise yet another
21 issue and, that is, designation of early voting versus
22 voting only on November 2nd. Because that's unclear, and
23 I don't think we should go forward. I'd be uncomfortable
24 going forward, unless this panel has some kind of
25 resolution on that. I don't think we should just throw it

1 out there and say, "Well, if you guys get it together by
2 next today, go ahead and start doing early voting."

3 We should either say that it's okay or say that
4 it's for November 2nd only. My understanding of your
5 motion is that it's for November 2nd only.

6 PANEL MEMBER MOTT-SMITH: My understanding of
7 what San Bernardino had asked for was on election day. I
8 wish they were here to answer that question.

9 Mr. Charles' indicated --

10 CHAIRPERSON KYLE: Don't we have a formal --
11 excuse me. Don't we have a formal --

12 PANEL MEMBER MOTT-SMITH: I looked at their
13 letter and it doesn't say.

14 ELECTIONS ANALYST WAGAMAN: Their letter doesn't
15 say the vendor's actually trying to contact the county to
16 verify what their intent would be.

17 CHAIRPERSON KYLE: I'd be more comfortable if
18 staff tried to contact the county right now and verify
19 what their intent would be. If you --

20 ELECTIONS ANALYST WAGAMAN: Staff will make that
21 attempt as we speak.

22 CHAIRPERSON KYLE: Thank you very much.

23 CHAIRPERSON KYLE: Let me go through the
24 non-controversial issues. And let's verify that we're all
25 on the same page on these.

1 One, that it would be used conditionally. It
2 would be used with the conditions that are articulated in
3 a motion that's already been seconded and passed regarding
4 the other three components that were tested.

5 John, you tracking --

6 PANEL MEMBER CARREL: It's only used with those
7 other --

8 CHAIRPERSON KYLE: Right. And all the conditions
9 set forth in the staff recommendation.

10 Two, that it's one time only. That's an open
11 issue as to early voting versus -- that it would only be
12 for November 2nd and/or early voting leading up to the
13 election November 2nd. And we'll clarify that in a
14 second.

15 Next, that it's only in San Bernardino, that it's
16 only in the headquarters election office of San
17 Bernardino.

18 That they're multiple machines. And I think we
19 need to define that with some specificity. We should
20 designate two machines, three machines.

21 PANEL MEMBER CARREL: I'd say three.

22 CHAIRPERSON KYLE: You didn't make the motion.

23 (Laughter.)

24 CHAIRPERSON KYLE: And then --

25 PANEL MEMBER JEFFERSON: I would say a thousand.

1 (Laughter.)

2 CHAIRPERSON KYLE: You'd say a thousand.

3 Election staff must act as poll workers. That's
4 how I'm phrasing that one.

5 It's only for English-spanish. That there are
6 Secretary of state on-site monitors. That the state and
7 the county and the vendor must submit written reports by
8 December 16th. That we require the county to conduct a
9 comparison of electronic versus paper in their official
10 canvass.

11 Then there's three that were offered as friendly
12 amendments: Notice to voters that there's a lowered
13 standard of privacy; assign voters randomly between
14 multiple machines; and disable the audio component.

15 PANEL MEMBER CARREL: I'll remove my disabling
16 the audio component if I can -- I'll remove my proposal to
17 disable the audio if I can promote the random assignment
18 to the machines and no records kept of which machine the
19 voter votes at.

20 CHAIRPERSON KYLE: While we're waiting for -- I
21 was going to say it's 12:35. Do you folks want to take a
22 break, and then we can come back and get some more
23 information hopefully from the county and try to resolve a
24 few of these issues?

25 PANEL MEMBER MOTT-SMITH: Okay. I just wanted to

1 mention that --

2 PANEL MEMBER CARREL: Are you talking about a
3 ten-minute break or a lunch break?

4 CHAIRPERSON KYLE: You have some information?

5 PANEL MEMBER MOTT-SMITH: -- that a portion of
6 the motion was a requirement for randomization, both of
7 the direction of the voters and to the machines and also
8 rotation of the printers on the machines. I didn't -- if
9 you mentioned that, I didn't --

10 CHAIRPERSON KYLE: No, I didn't.

11 PANEL MEMBER JEFFERSON: So in addition to
12 specifying the number of machines, we have to specify the
13 number of printers per machine, right?

14 PANEL MEMBER MOTT-SMITH: Yeah. And I'm -- yeah,
15 that's right.

16 PANEL MEMBER JEFFERSON: The more, the better.

17 CHAIRPERSON KYLE: So this to me goes to the
18 issue of how do we ensure a recount that's random. And
19 it's either changing printers or doing the cutting of the
20 ballot. And so that's one that needs to be worked out.

21 So I'm going to suggest a break until one
22 o'clock. That will give you folks a chance to grab a bite
23 real quick and inhale it and come back, and then we can --
24 hopefully we'll have some more data and maybe think
25 through some of these suggestions.

1 Okay. Hearing no objection.

2 (Thereupon a lunch break was taken.)

3 CHAIRPERSON KYLE: All right. We're tracking
4 Caren down, but let's reconvene.

5 And we understand from staff, you have new
6 information from San Bernardino County itself?

7 ELECTIONS ANALYST WAGAMAN: Correct. Their
8 original intent was to actually use the system Monday
9 through Wednesday next week. So starting on Monday
10 through Wednesday, just for those three days.

11 They said they could also support the alternative
12 option presented here of just using it on election day.
13 So they would be able to support either one of those
14 options.

15 PANEL MEMBER JEFFERSON: Excuse me. Do you have
16 any idea of the estimate of the number of voters who will
17 be involved in the Monday through Wednesday scenario?

18 ELECTIONS ANALYST WAGAMAN: I did not get an
19 estimate. They did say they're having fairly significant
20 volume, but they didn't -- I don't have an estimate.

21 PANEL MEMBER JEFFERSON: Again, it's a privacy
22 issue.

23 ELECTIONS ANALYST WAGAMAN: Right. I understand
24 the volume increasing of -- but, no, I don't have that
25 information for you.

1 CHAIRPERSON KYLE: With that new information, Mr.
2 Motion Maker, what do you think?

3 PANEL MEMBER MOTT-SMITH: I think -- I'm very
4 certain about election day. I think it would be good to
5 do it on election day. And I think Monday seems awfully
6 short notice to me.

7 CHAIRPERSON KYLE: Sure does, especially since
8 we're haggling over --

9 PANEL MEMBER MOTT-SMITH: They wouldn't get any
10 public notice out to speak of.

11 So I would say the Monday before the election and
12 the Tuesday of the election would be -- make more sense to
13 me. Or I'd just go for the day of the election. I don't
14 have that strong a feeling about it.

15 PANEL MEMBER CARREL: I agree with either one. I
16 don't think it matters, as long as it's not prior to the
17 Monday before the election day. And no more than that
18 Monday and Tuesday. But I could go with just one of them.

19 CHAIRPERSON KYLE: Tony.

20 PANEL MEMBER MILLER: I would defer to the county
21 actually. They could make the judgment as to what works
22 for them.

23 PANEL MEMBER CARREL: I just -- one other item.
24 Address -- and it's not specifically on this. But that is
25 that -- when we talk about an observer, I don't -- I just

1 want it understood that --

2 CHAIRPERSON KYLE: You.

3 (Laughter.)

4 PANEL MEMBER CARREL: I'm just wanted to say
5 that I -- no.

6 (Laughter.)

7 PANEL MEMBER CARREL: I just want it understood
8 that the observer is not for security purposes. We're
9 doing parallel monitoring to assure the accuracy. And
10 we'll do the comparison first for accuracy. But getting
11 the report from the county and report from the vendor and
12 then having our own monitor observer down there doing up a
13 report is to understand our concerns about implementation
14 of the system so that we can learn from it. And all three
15 of them are different perspectives. And I think we can
16 get a lot of information when we're three -- the three
17 different points, the county, the state and the vendor,
18 are all focused on the implementation of the perspectives.
19 And it's not necessarily like a security. It's to
20 understand and to improve based upon that.

21 CHAIRPERSON KYLE: I would agree with that.

22 Lee. And then I'll come back -- Mr. Jefferson.

23 PANEL MEMBER JEFFERSON: Well, okay. So I want
24 to make some general comments.

25 I really can't support this motion for the

1 reasons that I've outlined. But I want to sort of
2 summarize.

3 What we're talking about is characterizing a San
4 Bernardino precinct as an experiment. And I think
5 characterizing it as an experiment is really not proper.

6 The issue here to me is the privacy. So if I
7 were to characterize it as an experiment, I would like to
8 have an experiment that helps us determine whether or not
9 there are privacy issues with this architecture or not.
10 And the only way of doing that is not -- I mean it's not
11 going to suffice to use it in a precinct and note that,
12 after the fact, nobody is able to announce how any
13 particular voter voted and, therefore, call it a success,
14 there wasn't a privacy problem.

15 The only way to do this is to have somebody
16 actually attack in some realistic way, to actually try to
17 violate the privacy of some voters. Okay. And that means
18 somebody down there with access and with money to spread
19 around or something like that. And we're not
20 contemplating a serious experiment here.

21 What I expect to happen instead is that after
22 this happens we will get a nice report from staff and from
23 the county and they will say the thing went smoothly, the
24 printers didn't jam, the voters liked it, the vote counts
25 on paper matched the vote counts electronically

1 afterwards. Big success. And nothing about that kind of
2 report or that kind of experiment addresses the issue of
3 privacy.

4 We have no analytical analysis describing, you
5 know, what the parameters should be of the printer
6 swapping procedure that would minimize the risk to vote
7 privacy.

8 In the end I predict that what will happen is
9 that this experiment will be pronounced a success. It
10 will not mean anything at all about the primary issue of
11 privacy. But people will go on to tout it as a success.
12 California will have certified this system and California
13 will have written a report saying it was a success. And
14 we will not have been honest about -- nor true to our own
15 standards.

16 I would like to see us write standards and defend
17 them. We have written the standards. I would now like to
18 see us defend them. The standard says it shall not be
19 possible to reconstruct how a voter voted. It doesn't say
20 it shouldn't be possible if certain procedures are
21 followed. It doesn't say, you know, there shall be
22 procedural protections in place to help prevent the
23 possible violation of voter privacy. It says it shall be
24 impossible. I was one of the advisors that participated
25 in the writing of this standard. I knew what it meant.

1 Everybody on the phone calls that I was on understood what
2 that meant. I would like to see us set a standard and
3 stick to it.

4 So with respect to everybody, I can't support
5 this second motion, unless it were done -- unless they
6 were volunteer voters whose votes did not count. And then
7 I would enthusiastically support it.

8 CHAIRPERSON KYLE: Any other comments?

9 John, would you mind going through your point by
10 point.

11 PANEL MEMBER MOTT-SMITH: Is this a summary of
12 the motion?

13 CHAIRPERSON KYLE: Yes, please.

14 PANEL MEMBER MOTT-SMITH: Just one comment. As
15 we did hear, I am concerned that 2005 is upon us and 2006
16 is going to be here soon too, and I do think this moves us
17 down the road. And I also think, David, that we can
18 address any weaknesses in the way that the study -- or
19 things that we don't address, we can call those out in the
20 study and say those weren't addressed. This does
21 necessarily -- this is not to change the standards. This
22 is to get some real world experience.

23 So the motion is, as Mr. Kyle suggested, to
24 certify with conditions:

25 The first of which is all of the conditions in

1 the original motion.

2 The second is that it's for one time, which is
3 the November 2nd general election.

4 Third is that it's in one place, San Bernardino
5 County.

6 The fourth is that it's in the headquarters only.

7 Fifth -- and if I lose track of the numbers, just --

8 CHAIRPERSON KYLE: Just say "next".

9 PANEL MEMBER MOTT-SMITH: -- that there be
10 multiple machines. And I would suggest no less than
11 three, no more than five.

12 Next, that there be a -- that voters be assigned
13 to the machines in a random fashion.

14 Next, that there be a system for rotation of
15 printers on each of the machines periodically through the
16 day so that each machine has more than one printer
17 assigned to it and that those printers are rotated
18 randomly through the day.

19 Next, the election office staff -- or the
20 equivalent to the election office staff who are
21 specifically trained for this purpose be the people who
22 administer it.

23 Next, it's only for English and Spanish.

24 Next, that the SOS monitor participate on site in
25 the voting.

1 Next, that there be reports no later than the
2 15th of December from our office, from the vendor, and
3 from the county separately.

4 And, next, that there be a comparison of the
5 paper versus the electronic record.

6 And I believe that that is the list of
7 conditions, unless I missed something.

8 PANEL MEMBER CARREL: I think when you talk about
9 voters being assigned randomly to the machines, in
10 addition to that it was that no records be kept of which
11 voters voted on those machines.

12 PANEL MEMBER MOTT-SMITH: Okay.

13 CHAIRPERSON KYLE: Do you accept that?

14 PANEL MEMBER MOTT-SMITH: Yes.

15 PANEL MEMBER MILLER: Point of clarification.
16 Which days can be used --

17 PANEL MEMBER MOTT-SMITH: Oh, I'm sorry. It
18 would be on Monday and Tuesday, so November 1st and
19 November 2nd.

20 PANEL MEMBER CARREL: And did we want to -- what
21 was the number of machines? You said three --

22 PANEL MEMBER MOTT-SMITH: No less than three, no
23 more than five.

24 PANEL MEMBER CARREL: Do we want to just
25 establish three or four --

1 PANEL MEMBER MOTT-SMITH: Four.

2 PANEL MEMBER CARREL: Four?

3 CHAIRPERSON KYLE: Well, why don't we --

4 PANEL MEMBER MILLER: Let the county make that

5 decision.

6 CHAIRPERSON KYLE: What about -- have we

7 eliminated the discussion of disabling the audio

8 component?

9 PANEL MEMBER CARREL: I think I rescinded that.

10 PANEL MEMBER MILLER: Yes, he did.

11 CHAIRPERSON KYLE: And what about notice that

12 there's a lower standard of privacy?

13 PANEL MEMBER MILLER: Not supportive.

14 PANEL MEMBER DANIELS-MEADE: Not supportive.

15 PANEL MEMBER CARREL: Not supportive.

16 CHAIRPERSON KYLE: What about a notice of...

17 PANEL MEMBER MILLER: No, whatever it is.

18 (Laughter.)

19 PANEL MEMBER DANIELS-MEADE: Do you want a

20 million dollars?

21 (Laughter.)

22 CHAIRPERSON KYLE: All right.

23 ELECTIONS ANALYST WAGAMAN: Was the audio

24 question addressed?

25 PANEL MEMBER CARREL: Yeah, I rescinded that.

1 ELECTIONS ANALYST WAGAMAN: Okay.

2 CHAIRPERSON KYLE: And --

3 PANEL MEMBER CARREL: I would just make one
4 comment. And it's related to the standards, so I assume
5 it's in the procedures, although I'd have to check. But
6 that if there's a problem with the verification, voter
7 notices that the machine is pulled out of service, so I
8 assume that that's --

9 ELECTIONS ANALYST WAGAMAN: All that same
10 language has been -- with the procedures.

11 PANEL MEMBER CARREL: So there's no need to put
12 that in.

13 CHAIRPERSON KYLE: And, Mr. Mott-Smith, what's
14 your proposal for addressing Mr. Jefferson's concern about
15 some kind of standards for how -- or parameters for
16 changing the printer?

17 PANEL MEMBER MOTT-SMITH: I would like the
18 general condition that is included in number -- the first
19 condition.

20 CHAIRPERSON KYLE: Whatever one that is?

21 PANEL MEMBER MOTT-SMITH: Yeah, that allows us --
22 the staff to work out with the county a) what the
23 procedures would be for rotation of the printers and b)
24 possibly if there are issues that relate to specific
25 procedures for recount.

1 CHAIRPERSON KYLE: Okay. So that will be added.

2 ELECTIONS ANALYST WAGAMAN: So here -- base that
3 plan agreed to by both the county and the Secretary of
4 State's office for the implementation of this pilot
5 program?

6 PANEL MEMBER MOTT-SMITH: Right.

7 ELECTIONS ANALYST WAGAMAN: Including, but not
8 limited to, the issues just addressed. Okay.

9 CHAIRPERSON KYLE: Anything else?

10 All right. Then the motion as it stands, all
11 those in favor?

12 PANEL MEMBER CARREL: Do we have a second from
13 Mr. Miller?

14 PANEL MEMBER MILLER: Yes, we do.

15 CHAIRPERSON KYLE: All those in favor?

16 (Ayes.)

17 CHAIRPERSON KYLE: Did I here any ayes ace to my
18 left?

19 PANEL MEMBER MOTT-SMITH: I was an aye.

20 CHAIRPERSON KYLE: All those opposed?

21 (Hands raised.)

22 CHAIRPERSON KYLE: All those abstaining?

23 The "ayes" have it.

24 All right. I would like to set a date on that
25 one for setting up the procedures though so we're not

1 fumbling into November 1st.

2 PANEL MEMBER MOTT-SMITH: Okay.

3 PANEL MEMBER CARREL: Today's Friday.

4 CHAIRPERSON KYLE: Wednesday or Thursday?

5 ELECTIONS ANALYST WAGAMAN: I would suggest

6 Wednesday because that's the date already in the --

7 deadline to submit the report from the ITA.

8 CHAIRPERSON KYLE: Good.

9 PANEL MEMBER MOTT-SMITH: Good.

10 CHAIRPERSON KYLE: All right. So by next

11 Wednesday.

12 PANEL MEMBER CARREL: Half a loaf, Mr. Charles.

13 CHAIRPERSON KYLE: Few slice.

14 (Laughter.)

15 CHAIRPERSON KYLE: Okay. So we're done with that

16 part.

17 Move on to Agenda Item 2, and then 3. And we

18 should be done by 6 or 7.

19 (Laughter.)

20 ELECTIONS ANALYST WAGAMAN: Mr. Chair, would you

21 prefer to address the ES&S items together or separately?

22 PANEL MEMBER CARREL: Please, together.

23 CHAIRPERSON KYLE: That's a question to the

24 Chair. You're the Vice Chair.

25 Any objection to doing them together?

1 Hearing none.

2 Do it.

3 ELECTIONS ANALYST WAGAMAN: I may bounce them
4 back and forth a little bit because I have the report
5 written separately. You'll be looking at tabs D and G for
6 the staff reports.

7 These are the items remaining under ES&S that
8 staff had difficulty verifying the current certification
9 status of the particular version that was being used in
10 the state. The equipment itself was certified. And as I
11 go forward, I'll explain some of the history on each of
12 these items as we go forward. But that's what we're
13 looking at here. These are items already deployed. These
14 are not new systems. It's going back and we're trying to
15 clean up some of our certification on systems already
16 deployed.

17 The iVotronic version 7.4.5.0. The iVotronic is
18 a DRE touchscreen voting system. It's a little different
19 from some of the ones we've seen before in that instead of
20 it being activated by a card activator or a credit card,
21 it's activated by a PEB, which is -- it looks like half a
22 brick basically. And it's put in there and it's actually
23 activated by the poll worker rather than the voter.
24 That's the principal functional difference from some of
25 the other DRE's you're more familiar with.

1 Also, the printer is not installed directly on
2 the printer. It's actually got one communication pack
3 that's used for the whole precinct that relates to that
4 printer.

5 Those are the major functional differences from
6 systems you're more familiar with.

7 The historic record on this is: Staff has been
8 able verify that version 7.4.1.0 was cert -- 7.4.0 -- I'm
9 sorry -- was certified previously by the state. We also
10 know that separate 7.4.5.0 was tested by the state. We
11 know that a VSP hearing was held. Probably no minutes
12 from that meeting because that happens to be a meeting
13 where we had a problem with our shorthand reporter where
14 both pieces of their equipment broke down so there is no
15 minutes from that meeting. We know it was considered by
16 the panel. However, we don't know what action was taken
17 and we don't have a record of whether -- approval was
18 issued or not.

19 So that's a history on that particular item.

20 That firmware version number has -- does have a
21 NASED number, 010105-7.4.5.0. Those are the 1990
22 standards.

23 Switching over now to the other system before I
24 move on to the state testing. The other -- I'm sorry.
25 Back on the iVotronic. That is only used in Merced

1 County, so you're only talking about one county.

2 The other component of the application relates to
3 San Mateo County. The two components are the Optech Eagle
4 and the Optech IV-C. The Optech Eagle is a precinct count
5 optical scan. The IV-C is a central count optical scan.

6 That equipment is used in two other counties:
7 Amador and San Francisco. The San Francisco equipment
8 carries that one-time-use cert for previously -- rank
9 choice voting. The Amador uses an older version, which we
10 were able to verify the certification on.

11 So the -- issue only relates to San Mateo County.

12 The Optech Eagle, its APS version 1.52 and APS
13 version 1.30, again, is a central -- is a precinct count
14 optical scan system. There are a couple of chinks between
15 the version that we have a record of certification on,
16 which is the version used in Amador.

17 The Optech IV-C is, again, a central count
18 optical scan system. There are some changes -- fairly
19 minor changes between that and the version that we've been
20 able to verify certified 1.03b.

21 But the history on this is that all this
22 equipment was certified back once Sequoia and ES&S were
23 the same company, VRC. And so some of the certification
24 documents from back then have been lost in the split. So
25 we weren't able to necessarily verify all the equipment.

1 Sequoia has a similar 1.301.50, which we were
2 able to verify the certification on. But we don't know if
3 what they call 1.30 is the same thing as what ES&S calls
4 1.30. So we weren't able to verify that certification.

5 These are legacy systems. They have been tested
6 on, so they were grandfathered in under their state
7 certification previously. They are federal qualification.
8 They do not have a NASED number on them. They have been
9 tested at the federal level, both tested and -- or two
10 times they've been tested we know of in recent history,
11 one where they're tested and the Feds include them as part
12 of NASED number but basically said these are legacy
13 systems and certification should depend on state testing.

14 The other item where they were tested was as part
15 of rank choice voting. They did not issue an NASED number
16 then because the Feds did not have standards to issue a
17 qualification on rank choice voting. So they tested, did
18 code review on it, but they did not qualify -- did not
19 issue a federal qualification number for it.

20 So that's the history on these items.

21 We're close to the state testing. Staff have
22 been working with the vendor for several months trying to
23 verify the certification status, when it became apparent
24 that we couldn't -- state offered the vendor an
25 opportunity to bring it forward for a full round of state

1 testing. The vendor indicated that there would not be
2 sufficient time to complete that prior to the election.
3 So staff then instead arranged directly with the two
4 counties affected to do a more limited state testing with
5 more limited objectives.

6 Basically what the goal was is to do sufficient
7 testing to allow a one-time use cert limited to the
8 specific jurisdictions and to be able to bring that
9 forward -- and to be comfortable bringing that forward
10 before the Panel. So the testing was more limited in that
11 we didn't try to extrapolate out to every single possible
12 scenario. Specifically we did not test the primary logic,
13 which takes up a significant amount of our state testing.
14 So the state testing was very limited with a very limited
15 goal.

16 That testing was conducted in the counties, in
17 Merced and in San Mateo, earlier this month. The vendor
18 was present and did participate in that testing. The
19 testing was successful for the purposes as I just
20 described, which leads us forward to our reports.

21 On the iVotronic, this does not currently include
22 the voter-verified paper audit trail. One issue of note
23 is that the vendor does intend to bring forward the
24 iVotronic either with the new firmware version or with the
25 firm -- a new firmware version that is federally qualified

1 or another new firmware version that includes the VVPAT,
2 whichever one they have ready. But they would bring that
3 forward I believe in December and January. You can ask
4 the vendor about that. So that will be in place before
5 March, which is the next time the county may have a local
6 election. So that they would not have to go back through
7 this process -- they would have a full cert by that point.

8 But, again, this does not include currently the
9 voter-verified paper audit trail. So not that it's
10 relevant since this is one-time use, but it would have all
11 the other standards that carry requirements that are
12 required for the April directives.

13 That leads us to recommended certifications,
14 first on the iVotronic, again certified only for the
15 specific jurisdiction, Merced; certified only for the
16 particular election that was tested, November 2004 general
17 election; only be certified with -- used with certified
18 election management software, the Unity package; the
19 standard language about no modifications at a later date.

20 The items 6 through 7 are the standard language
21 as relating to the April directives on touchscreen voting.
22 I removed the standard language relating to the timing out
23 January 2006 since this certification would end at the end
24 of this year or with the November election, regardless.

25 Two other items. One is -- item 8 is the

1 Election Observer Panel plan. That's a standard
2 requirement.

3 Item 9 is worthy of note. It requires them to
4 submit a copy of their -- the certification from the Logic
5 and Accuracy Board. That's something that's already
6 required under the Elections Code. That was added here
7 because part of the state testing was based around the
8 logic and accuracy testing the counties were doing. We
9 actually worked with both county and vendor to modify
10 their logic and accuracy testing in order to beef it up to
11 a point where we felt it would be sufficient to verify the
12 accuracy of the system in this limited environment.

13 So the submission of that logic and accuracy is
14 important towards the staff recommendation that that was
15 successfully completed. So that's why that was added
16 specifically then rather than just relying on the
17 Elections Code.

18 So that's the first recommendation.

19 The second recommendation relates to the Optech
20 Eagle and the Optech IV-C. Recommending the Optech Eagle
21 APS version 1.52, HPS version 1.30; Optech IV-C version
22 1.07a with the following conditions:

23 Again, limited to San Mateo County. Again,
24 limited to the November election.

25 Again, limited to use with certified election

1 management software. In both of these case it's Unity
2 2.2, by the way.

3 4) That it not -- the Optech Eagle shall not be
4 permitted to be connected to an exterior communications
5 system, including the public telephone system. The reason
6 for that is that one of those changes between 1.28 and
7 1.30 is a change that relates to the use of the modem. It
8 allows for basically the modem being -- in certain
9 situations be triggered automatically if certain
10 conditions are met. That was not tested as part of the
11 state testing. Therefore, that's a change that we didn't
12 test; so, therefore, it's not a change we're comfortable
13 recommending to you. The county's not planning on using
14 it, so it's not an issue. But that's a condition on the
15 certification.

16 Five is, again, the standard language about no
17 modifications without approval.

18 Six is, again, standard language relating to
19 preserving the right to make modifications at a later
20 date.

21 Item 7 is, again, Election Observer Panel plan,
22 which is standard.

23 Item 8 is, again, the Logic and Accuracy Board.
24 Again, the same logic as from Merced. The only difference
25 being that San Mateo's original logic and accuracy plan

1 met our needs. We didn't require any additional changes
2 like Merced, where we requested changes be made.

3 Thus concludes the staff report.

4 CHAIRPERSON KYLE: Okay.

5 And what was your thinking behind limiting both
6 of those to just November 2004?

7 ELECTIONS ANALYST WAGAMAN: The state testing was
8 specifically designed only to verify our accuracy for that
9 election. Basically what we did is rather than our
10 standard testing where we developed a test deck that makes
11 sure it exercises all the logic that could be run into in
12 the state, all the primary logic, all the general logic,
13 all the write-in logic, all the multiple vote logic, all
14 those kind of logics that possibly could exist, what we in
15 essence did is we took their election data set and used
16 that to build our test deck around. So, therefore, we
17 didn't test all the logic. We only tested the logic of --
18 Merced's logic for the November election or San Mateo's
19 logic for the November election. So other elections that
20 logic was not necessarily tested; so, therefore, we're not
21 recommending the certification beyond that.

22 And as I indicated earlier on the iVotronic, the
23 same is true for the Eagle and IV-C, that that vendor has
24 basically already agreed to bring forward those items for
25 a full round of testing once we get through this election.

1 CHAIRPERSON KYLE: So they would supercede the
2 need?

3 ELECTIONS ANALYST WAGAMAN: Correct, they would
4 bring forward before March, which is when both those
5 jurisdictions -- the earliest they would have any other
6 elections in those jurisdictions.

7 CHAIRPERSON KYLE: Okay. Any questions for -- go
8 ahead John.

9 PANEL MEMBER MOTT-SMITH: Are we talking about
10 the November only for the November state election? In
11 other words, I'm not aware whether the counties have --
12 merced or San Mateo might have elections in December or
13 January --

14 ELECTIONS ANALYST WAGAMAN: No, both those
15 counties have indicated the earliest they'll have an
16 election is March of 2005. They have no December
17 elections or January or February elections planned. San
18 Mateo is definitely having an election March. Merced may,
19 but think it's more likely not till December of 2005.

20 PANEL MEMBER MOTT-SMITH: All right.

21 PANEL MEMBER CARREL: Building on that. If --
22 they're actually in March. But you're suggesting ES&S
23 going forward with a new generation of software, is that
24 what you're saying?

25 ELECTIONS ANALYST WAGAMAN: They'd either bring

1 forward a new version of software, which is the case with
2 the iVotronic, or they're bring forward another version --
3 the current version before you, but we would go through a
4 full round of state testing designed to test all the logic
5 that would be sufficient to issue a full certification.

6 PANEL MEMBER CARREL: Is there Federal
7 qualification at this point or not?

8 ELECTIONS ANALYST WAGAMAN: The federal
9 qualification's already on there on the iVotronic for the
10 new version.

11 PANEL MEMBER CARREL: On the new version?

12 ELECTIONS ANALYST WAGAMAN: Right. There were --
13 the Unity version 2.4.3, which you certified previously
14 listed in the -- the optical scan systems, includes a
15 qualification on the iVotronic 8.000. They may bring
16 forward an even newer version than that that supports the
17 VVPAT if it's ready. But they have at least one version
18 that is fully qualified.

19 PANEL MEMBER CARREL: But that still needs state
20 certification and that's --

21 ELECTIONS ANALYST WAGAMAN: Right.

22 -- the version that the counties are anticipating
23 using after this election?

24 ELECTIONS ANALYST WAGAMAN: Correct. They
25 would -- this system would only be certified for this one

1 election. So in future elections they would have to get
2 something forward to be fully certified before it could be
3 used.

4 CHAIRPERSON KYLE: Other questions from the
5 Panel?

6 PANEL MEMBER CARREL: One more.

7 I'm trying to find the recommendations. And I
8 see a recommendation page here for the Optech Eagle and
9 Optech IV-C version 1.07a. Then I see one for the
10 iVotronic in Merced.

11 But the Optech Eagle for San Mateo, wasn't San
12 Francisco part of this?

13 ELECTIONS ANALYST WAGAMAN: San Francisco uses
14 the same configuration, but they use a modified version
15 that includes rank choice voting.

16 PANEL MEMBER CARREL: Then we've already cert --

17 ELECTIONS ANALYST WAGAMAN: Then you already have
18 a one-time-use certification on it, correct.

19 CHAIRPERSON KYLE: Any questions? And also we
20 have the vendor representative here. So if there are
21 questions --

22 PANEL MEMBER KERCHER: Just a clarification.

23 The logic and accuracy test with each of the
24 counties, have those tests actually been performed and
25 have we seen the results or we're just waiting for a final

1 report, or is your recommendation somehow dependent upon
2 the results that are in a report --

3 ELECTIONS ANALYST WAGAMAN: The last impression I
4 had was that the testing had been completed. I have not
5 received that -- the document that would verify that,
6 which is that Logic and Accuracy Board certification,
7 which is why that was included in a condition. The state
8 testing was built around the logic and accuracy testing in
9 part, and that's why that was put in there.

10 PANEL MEMBER KERCHER: So, again, are you going
11 to be making a conditional determination when you see
12 those reports?

13 ELECTIONS ANALYST WAGAMAN: Right. They have
14 provided copies of what the test plan was. We observed
15 portions of the plan. We participated in parts of the
16 logic and accuracy testing. That certification would
17 indicate that that plan had been successfully completed --

18 PANEL MEMBER KERCHER: Thank you.

19 ELECTIONS ANALYST WAGAMAN: -- which would then
20 meet the staff's -- which meet the needs for staff to then
21 issue that recommendation for certification with
22 conditions.

23 PANEL MEMBER CARREL: I would make a motion to
24 adopt staff recommendations.

25 PANEL MEMBER DANIELS-MEADE: Second.

1 CHAIRPERSON KYLE: I'm going to hold off on it.

2 Thank you very much. The motion is duly noted.

3 I just want to give the vendor representative an
4 opportunity to speak if there's any points to be made. Or
5 any questions from the panel to the vendor rep?

6 Okay. Then we have a motion and a second to
7 adopt the recommendations for both the Eagle and the
8 iVotronic, if I can use shorthand --

9 ELECTIONS ANALYST WAGAMAN: -- and the IV-C?

10 CHAIRPERSON KYLE: Both -- all three. Right, the
11 IV-C -- the Eagle, the IV-C and the iVotronic.

12 PANEL MEMBER CARREL: -- and the Optech IV-C
13 version 1.07a and iVotronic.

14 CHAIRPERSON KYLE: Any discussion?

15 Okay. Anyone want to segregate the motions?

16 (Laughter.)

17 CHAIRPERSON KYLE: All right. In that case,
18 let's all up or all down.

19 All those in favor say aye.

20 (Ayes.)

21 CHAIRPERSON KYLE: Those opposed?

22 Any abstentions?

23 The "ayes" have it.

24 Any additional items?

25 ELECTIONS ANALYST WAGAMAN: No, sir.

1 CHAIRPERSON KYLE: Okay. Then I'll entertain a
2 motion to adjourn.

3 PANEL MEMBER CARREL: So moved.

4 PANEL MEMBER DANIELS-MEADE: Second.

5 CHAIRPERSON KYLE: Okay. All those in favor?

6 (Ayes.)

7 CHAIRPERSON KYLE: Thank you. The "ayes" have
8 it.

9 (Thereupon the California Secretary of
10 State's, Voting Systems and Procedures
11 Panel adjourned at 1:35 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Secretary of State's, Voting Systems
7 and Procedures Panel meeting was reported in shorthand by
8 me, James F. Peters, a Certified Shorthand Reporter of the
9 State of California, and thereafter transcribed into
10 typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 5th day of November, 2004.

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22
23 JAMES F. PETERS, CSR, RPR
24 Certified Shorthand Reporter
25 License No. 10063